

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

IN THE MATTER OF)	
)	
APPLICATION BY QWEST COMMUNICATIONS)	
INTERNATIONAL, INC. FOR AUTHORIZATION	)	WC DOCKET NO. 02-148
TO PROVIDE IN-REGION, INTERLATA)	
SERVICES IN THE STATES OF COLORADO,)	
IDAHO, IOWA, NEBRASKA, AND NORTH)	
DAKOTA.)	
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**WRITTEN CONSULTATION OF
THE IDAHO PUBLIC UTILITIES COMMISSION**

On June 13, 2002, Qwest Communications International, Inc. (Qwest) filed a Joint Application for authorization to provide in-region, interLATA service in the states of Colorado, Idaho, Iowa, Nebraska and North Dakota, pursuant to Section 271 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 271. The Federal Communications Commission (FCC) issued its notice the same day requesting written comments and written consultations by state commissions from those states in which Qwest seeks interLATA authority under Section 271. This written consultation is filed by the Idaho Public Utilities Commission (IPUC).

BACKGROUND

Section 271 of the Act establishes the means for a Bell Operating Company (BOC), which includes Qwest, to obtain authorization from the FCC to begin providing in-region interLATA and interstate telecommunication services. In making its determination, the FCC is required to “consult with the state commission of any state that is the subject of the application in order to verify the compliance of the Bell Operating Company with the requirements of [Section 271].” 47 U.S.C. § 271(d)(2)(B). In order to provide a meaningful written consultation, it is necessary for a state to make a record and provide a recommendation regarding the BOC’s compliance with Section 271.

The IPUC has been involved in a case for over two years to establish a record and determine whether Qwest complies with the requirements of Section 271. The case in Idaho was initiated in February 2000 when Qwest filed a Notice of Intention to File a Section 271 application and a Motion for Alternative Procedure to Manage the Section 271 process. By its motion, Qwest asked the IPUC to approve a procedure to permit Qwest to submit a test plan for its operational support system (OSS), and to evaluate alternative approaches for considering each item on the 14-point checklist contained in Section 271.

On July 7, 2000, the IPUC issued Order No. 28439 granting Qwest's motion. The IPUC subsequently issued Procedural Order No. 28450, specifying the IPUC would join with other Qwest service states in a multi-state effort "to conduct a joint process to develop a factual record and consider aspects of Section 271 through collaborative workshops." Thereafter the Section 271 case at the state level proceeded by two separate, multi-state endeavors. One major effort, in which 13 states participated, focused on testing Qwest's OSS by independent entities. The OSS test process was managed by an already existing committee--the Regional Oversight Committee (ROC)--comprised of members from the Qwest local service states. A greater discussion of the OSS test process occurs later in these comments.

For the non-OSS process, the participating state commissions retained an outside facilitator, Liberty Consulting Group, to conduct workshops, establish a record to be filed in each state, and to make recommended findings regarding Qwest's compliance with the Section 271 requirements. The Facilitator was directed to conduct a number workshops, and to "prepare and submit a report on the agreed upon and unresolved issues in each workshop, identify findings of fact and conclusions of law, differing views and resolutions for the disputed issues and recommended findings of disputed issues." IPUC Order No. 28450, p. 2. The IPUC provided an opportunity for parties to file within 10 days of the filing of the Facilitator's reports "any proposed additional or revised findings of fact, conclusions of law or clarification of disputed issues." *Id.* Issues unresolved by the Facilitator were brought to the IPUC by written comments, parties were provided an opportunity to present oral argument on disputed issues, and the Commission issued decisions to resolve the disputed issues and approve the Facilitator's report.

At the direction of the state commissions, the Facilitator conducted several lengthy workshops and filed reports on each of the checklist items contained in Section 271(c)(2)(B), as well as the other requirements included in Section 271. Beginning March 19, 2001, the

Facilitator filed four separate reports, each identifying undisputed and resolved issues, as well as unresolved issues on which the Facilitator made recommendations. After each final report was filed, the IPUC issued a notice soliciting comments and objections on the unresolved issues from Qwest and other interested parties, including the IPUC Staff. The notice notified interested parties that the filing had occurred, and that the IPUC regarded “those issues identified in the report as undisputed as fully resolved through the workshop process.” The IPUC also notified interested parties that it would provide an opportunity for oral argument on disputed issues, the first of which convened on September 27, 2001.

IPUC DECISIONS ON NON-OSS SECTION 271 REQUIREMENTS

After receiving the Facilitator’s report at the conclusion of the relevant workshops, the written comments of the interested parties, and after hearing oral arguments, the IPUC issued a decision on the subjects covered in the Facilitator’s report. The IPUC issued four decisions regarding Qwest’s compliance with the Section 271 requirements. The four substantive decisions issued by the IPUC are the following:

1. Qwest’s compliance with the 14 item checklist in Section 271 (the Checklist Decision) issued November 21, 2001;
2. Qwest’s performance assurance plan issued March 7, 2002 (the QPAP Decision);
3. A decision on public interest, Track A, and Section 272 issued April 19, 2002 (the Public Interest Decision); and
4. The Commission’s final decision on Qwest Corporation’s compliance with Section 271 issued June 10, 2002 (Final Decision).

Each of the first three IPUC decisions approved the Facilitator’s report, discussed and resolved specific disputed issues, and made conditional findings on Qwest’s compliance with relevant Section 271 requirements. For example, the Checklist Decision states the IPUC “is prepared, when consulted by the FCC, to report that Qwest satisfies the access and interconnection requirements of the competitive checklist in 47 U.S.C. 271(c)(2)(B), so long as Qwest revises its SGAT [Statement of Generally Available Terms] as set forth in this decision and as may be necessary as this case proceeds to its conclusion.” Checklist Decision p. 10. The IPUC in its QPAP Decision said “the QPAP is well on its way to meeting the FCC’s zone of reasonableness standard,” but the IPUC was “not yet prepared to recommend approval of the

QPAP, however, because changes must still be made.” QPAP Decision p. 9. In its Public Interest Decision, the IPUC conditioned final approval on additional revisions to Qwest’s SGAT and, regarding Section 272 separate affiliate requirements, until supplemental comments were filed by IPUC Staff. Public Interest Decision p. 12.

Following issuance of the IPUC’s third decision, Qwest made a compliance filing on May 24, 2002. The compliance filing addressed all outstanding issues from the first three decisions as well as QPAP issues and the successful completion of the OSS test. The IPUC subsequently issued its Final Decision on June 10, 2002, approving the compliance filing, stating its belief that “Qwest has responded to the directives the [IPUC] stated in its three previous decisions, and has made the necessary changes to its SGAT or otherwise addressed the conditions put forth by the [IPUC].” Final Decision p. 9.

As part of the compliance filing Qwest included in the revised SGAT a new price list for its unbundled network elements (UNEs). Prices for UNEs were an issue in the IPUC’s Public Interest Decision where the IPUC stated it “cannot find Qwest in compliance with public interest standards until UNE prices that satisfy the FCC’s TELRIC standards are established.” Public Interest Decision p. 12. A separate docket currently is underway at the IPUC to establish UNE prices. In the Final Decision, the IPUC stated “the revised UNE prices are reasonable, pending resolution of the cost case, and the [IPUC] will permit them to be effective as of June 10, 2002.” Final Decision p. 7. Accordingly, the IPUC is satisfied with the interim UNE rates filed by Qwest and expects to complete its UNE cost docket to establish permanent TELRIC rates before the end of the year.

Noting in the Final Decision the extended time consumed by the case, the incredible effort and resources committed to it by numerous parties, the IPUC stated it was prepared, “when consulted by the FCC, to advise that the record establishes in this proceeding that Qwest has adequately addressed the Section 271 requirements.” Final Decision p. 9. Rather than further discuss or attempt to summarize in this written consultation the issues reviewed in each of the IPUC’s decisions, the four decisions are attached to this written consultation as Exhibits A, B, C, and D. In addition to more detailed discussion of the disputed issues resolved by the IPUC, the decisions also provide greater detail of the lengthy procedural process involved in the case that consumed more than two years. For more explicit review of particular aspects of the record,

each of the Facilitator's reports is available as part of the record filed with the FCC as part of Qwest's application.

As already noted, the IPUC's four decisions review a record that shows "Qwest has adequately addressed the Section 271 requirements." The decisions themselves, however, also identify issues that deserve additional comment to the FCC. For example, the IPUC participated in a multi-state testing process for Qwest's operational support system (OSS), but did not independently review the test results. The IPUC notified parties it would accept written comments following completion of the draft final OSS test report, and forward those comments as part of its filing with the FCC. In addition, late comments filed by some parties in the IPUC's case identify issues deserving comment from the IPUC as part of its written consultation.

THE OSS TEST PROCESS AND RESULTS

The multi-state OSS testing effort was established and monitored by the Regional Oversight Committee (ROC), a committee comprised of members from state commissions in those states where Qwest provides local service. The ROC created an Executive Committee to retain vendors to administer the test and a Technical Advisory Group (TAG) to oversee the day-to-day test operations. The TAG also provided a forum for participants to design and evaluate the test process, and provided technical assistance in test planning.

In September 1999, the ROC hired Maxim Telecommunications Group Consulting (MTG) to act as the project manager for the third party test. Beginning in late 1999, the TAG held numerous meetings to establish test principles, performance measures, and the documents describing the test. As part of the TAG's efforts, an extensive list of Performance Indicator Definitions (PIDs) was developed, describing the manner in which Qwest's performance would be measured.

In July 2000, the ROC contracted with three additional parties to assist in the test process. KPMG Consulting (KPMG) was retained to serve as the test administrator, Hewlett-Packard was hired to serve as a surrogate CLEC in the testing process, and Liberty Consulting Group was retained to conduct an audit of the PIDs to ensure that Qwest was properly measuring and recording its commercial data.

Staff from the IPUC actively participated in the development and conduct of the regional third party test of Qwest's OSS. Staff actively participated in all the workshops that established the principles and procedures used by the vendors in the conduct of the test, ensuring that the

testing addressed Idaho specific conditions and concerns. The workshop that focused on the development of the Master Test Plan was held in the IPUC hearing room.

During the conduct of the test, IPUC staff actively participated in nearly all ongoing discussions and conference calls. In addition to weekly steering committee and TAG conference calls, IPUC staff participated in weekly project management calls between Qwest and the test vendors, where schedules and other project management issues were discussed. Staff also actively participated in the observation and exception focus calls, initially held weekly, and progressing to daily calls as the testing neared its end. IPUC staff also was involved in nearly every special issue working group that was established to address specific issues, primarily those dealing with the PIDs. Idaho's staff was one of the few from state commissions to participate regularly in daily status calls between the vendors. IPUC staff, along with the Montana Commission staff, were recognized by the test vendors during the final Vendor Technical Conference for their consistent and active participation throughout the test.

Comments were filed by AT&T with the IPUC after its Final Decision, focusing on the issues that remained unresolved at the conclusion of the OSS test. The IPUC's conclusion that Qwest provides nondiscriminatory access to its OSS recognized that while some areas still needed improvement, the overall record demonstrated CLEC's are provided with non-discriminatory access to Qwest's OSS. Previous FCC decisions in Section 271 cases clearly establish that perfect results are not required, but that the OSS access must be viewed in its entirety. The Qwest OSS test vendors concluded that CLEC's overall are provided nondiscriminatory access to Qwest's systems, and the IPUC agrees with this finding. The issues that remain, which individually may be significant, do not negate this overall finding.

The comments filed by AT&T regarding the OSS test results are attached to this written consultation as Exhibit E. The IPUC reviewed the comments in light of the successful conclusion of the OSS test, and also briefly discusses the issues raised by AT&T in the next section of this consultation.

IPUC'S COMMENTS REGARDING UNRESOLVED OSS ISSUES

1. Human Errors in Manual Order Processing.

The testing revealed an unacceptably high level of human errors in the manual processing of orders. Although Qwest implemented additional training and revised documentation to address this problem, the problems persisted in the limited retesting conducted

after the fixes were implemented. Qwest proposed additional monitoring and performance reporting in lieu of additional testing. The Steering Committee asked KPMG to review the adequacy of the additional reporting proposed by Qwest, and its recommendation was contained in the “White Paper” entitled “Qwest Manual Order Entry Performance Indicator Description Adequacy Study”. The study proposed an extensive reporting regime to fully identify the scope and nature of any ongoing problems with manually handled orders. In its response to the study, Qwest indicated the reporting proposed in the study was excessive, and proposed an alternative, but committed to working with a multi-state long term PID administration effort to further refine its proposal. The IPUC supports additional reporting and monitoring to address this issue, and is confident the long term Section 271 effort can develop metrics that will adequately measure Qwest’s reporting in this area. The IPUC considers this issue a logical addition to the Qwest Performance Assurance Plan (QPAP), and expects that it will be addressed in the initial six-month review of the QPAP.

2. Inaccurate Qwest Reported Performance Data.

The initial test plan envisioned KPMG making a direct comparison between its measured performance for the pseudo-CLEC, and the performance reported by Qwest. Due to differences in timeframes, however, such a comparison was not meaningful. Therefore, KPMG analyzed the actual records Qwest uses to produce its performance reports, comparing the underlying data as recorded by Qwest with the same data as measured by the test. This analysis initially revealed problems with Qwest’s underlying data. Qwest implemented changes to its procedures for recording the data, and corrected the results for the historical data. KPMG examined the changes made by Qwest and the corrected results and concluded that the changes resolved the instant concerns. Qwest elected not to conduct further testing, so KPMG was unable to determine whether these changes adequately addressed these issues for future reporting.

AT&T portrayed KPMG’s failure to produce the direct comparison between measured and reported performance as a deficiency of the test. KPMG’s examination of the underlying data as recorded by Qwest, in combination with the Liberty audit of the procedures used by Qwest to calculate the reports, is a more thorough method of examining this issue than the direct comparison. The combined efforts of KPMG and Liberty provide reasonable assurances that Qwest’s performance reporting was accurate at the conclusion of the test.

The continued reliability of Qwest's performance reports is a significant concern, and one the IPUC expects to monitor closely. The inability of the Liberty data reconciliation efforts to fully explain a significant percentage of the discrepancies between Qwest's data and that of participating CLECs supports that concern. While the audit provisions contained in the QPAP provide significant tools for examining this issue, the IPUC supports additional efforts in this area. The IPUC expects the long-term multi-state effort to address this issue.

3. Discriminatory Treatment in the Provision of Jeopardy Notices.

Although the test indicated a failure in this area, the IPUC finds Qwest's explanation that the test results are an anomaly of the test design to be convincing. The orders submitted in the test were all non-dispatch, which have short provisioning timeframes, typically hours instead of days. It is logical that jeopardy notice performance on such orders would not be representative of Qwest's provision of jeopardy notices on all types of orders, including the dispatched orders with multi-day provisioning intervals.

Qwest's wholesale performance report for jeopardy notices indicates Qwest is not consistently meeting a parity performance level for this measure. The performance is sporadic, some months exceeding parity, while others are well below parity. Jeopardy notice performance is an issue that is included in Qwest's Performance Assurance Plan (QPAP), so the IPUC fully expects Qwest to continue to work to improve its performance in this area.

4. Insufficient Capability to Provision Dark Fiber.

The Test relied upon a review of the company's documented processes and observation of commercially placed orders to evaluate dark fiber provisioning. In response to the exceptions raised, Qwest made a number of improvements to its documentation and procedures, and KPMG eventually found the processes to be adequate. Nonetheless, in the few orders that were evaluated after the documentation had been updated, Qwest's technicians failed to adequately follow the documented processes. Qwest responded that it would conduct additional training of its technicians, but because the test was nearing its conclusion and waiting for commercial observations would involve considerable delay, Qwest elected to not have the test vendors verify whether such training had resolved the problems.

Dark fiber orders are infrequent, with no Idaho orders in most months. The reported commercial results are mixed, and while they do not demonstrate parity, they also do not portray major problems. Qwest made significant improvements to its processes, and the IPUC expects

performance in the provisioning of dark fiber to improve. While the IPUC considers this issue to be significant, we do not consider the extent of the problems uncovered by the test to be sufficient to deny a competitor a reasonable opportunity to compete. Dark fiber products are not eligible for QPAP payments at this time. The IPUC will continue to monitor Qwest's performance in this area, and should less than parity performance continue, the IPUC will support the inclusion of dark fiber products in the QPAP at the periodic reviews.

5. Insufficient Capability to Provision Enhanced Extended Links (EELs).

This is similar to the dark fiber issue. Problems with both the documented procedures and compliance with those procedures were uncovered during the test. Qwest made significant improvement to the documented process and resolved those concerns. Qwest technicians again failed to adequately follow the revised procedures when testers observed the few commercial orders that were available during the retest period. Qwest indicated it would provide additional training, but elected not to delay the conclusion of the test to verify that the training had resolved the compliance issues.

As with dark fiber, EEL orders are relatively rare, with no Idaho orders in most months. The reported commercial results are inconclusive. If Qwest technicians were significantly failing to follow documented procedures, one would expect installation quality problems or delayed installations. While the reported results do not show major problems in either area, they fail to eliminate the concerns raised by the test. Qwest made significant improvements to its processes, and the IPUC expects performance in the provisioning of EELs to improve. Although this issue is significant, the extent of the problems uncovered by the test are not sufficient to prevent a reasonable opportunity for a competitor to compete. EELs are not eligible for QPAP payments at this time. The IPUC will continue to monitor Qwest's performance in this area, and should performance indicate continuing problems, the IPUC will support the inclusion of EEL products in the QPAP at the periodic reviews.

6. Lack of Parity in Provisioning Non-Dispatched UNE-P and Business Resale Orders.

The test results indicated Qwest took more time to install the pseudo-CLEC's business resale and UNE-P orders not requiring a dispatch than it did to install the comparable retail product (business POTS). Qwest responded that commercial results demonstrate Qwest is

providing parity for this measure. The IPUC agrees that the regional commercial data supports the Qwest position that parity is being provided for these measures.

7. Inaccurate Disposition Codes for CLEC Trouble Reports.

The test revealed inconsistencies in the codes entered in repair records by Qwest technicians or other personnel. These errors may result in improper treatment of individual repair records in Qwest's performance reports. Qwest made a number of improvements to the documented procedures for coding such reports, and its performance did improve upon retest. However, the results still failed to reach a level deemed acceptable by KPMG. Qwest indicated its performance had improved considerably, that the correct information was usually contained in the narrative field on the report, and that it would conduct additional training and implement tighter review and coaching procedures to ensure errors are kept to a minimum, but elected not to conduct further retesting.

This issue was also raised in the Liberty audit and data reconciliation efforts. It is of particular concern as it may have a significant impact on the inclusion of individual repair records in Qwest's performance reports, and the exclusion of just a few records could have a significant impact on payments made to CLECs under the QPAP. It may also make it possible to mask Qwest's real performance in repairing CLEC related facilities.

Qwest's performance upon retest was not far from the levels established by KPMG for satisfactory performance. The training and monitoring that Qwest proposed, if maintained, may well have raised Qwest's performance above the KPMG level, but that has not been verified. Qwest's wholesale repair performance, as measured by KPMG, is consistent with that reported by Qwest, which tends to indicate the coding errors are not having a significant discriminatory effect on the overall reporting results. While the IPUC supports additional ongoing improvements in this area, the current performance does not appear to prevent a CLEC from having a reasonable opportunity to compete. The IPUC supports the structuring of any audits conducted under the terms of the QPAP to enable further examination of this issue.

8. Inadequate and Unstable Processes for the Production of DUF Reports.

Qwest failed the DUF test five consecutive times, and on the sixth test barely met KPMG's criteria. AT&T maintains that the test failed to demonstrate whether Qwest could consistently provide complete and accurate DUF information. However, the "military style"

testing agreed to by all parties in the ROC test, which requires retesting until passed, is not designed to test ongoing consistency, but to provide a status of the performance at the time the test is conducted. At the time the test concluded, Qwest's performance met the criteria required to satisfy this issue. In addition, The IPUC understands that the process improvements implemented by Qwest that enabled it to pass the sixth test were improvements to its systems, primarily software fixes. Such improvements are not typically temporary in nature, but remain in place until circumstances change.

The QPAP is the tool that is designed to ensure Qwest maintains consistent performance. The BI-1 measure addresses the timeliness of DUF records provided to CLEC, which is part of the issues identified by the DUF testing results. BI-1 is a measure currently included in the QPAP. If the evidence indicates Qwest fails to maintain the quality and completeness of DUF records, the IPUC will support the development and addition to the QPAP of a PID addressing DUF accuracy and completeness.

Many of the improvements Qwest implemented to improve its performance consisted of additional training or coaching of existing personnel. This kind of fix requires constant attention for the improvements to be maintained. With the fiscal pressure imposed by the current downturn in the technology area, the IPUC is concerned that these improvements will not be maintained. Qwest has already announced that significant additional reductions in staff will be implemented, which will place even greater burdens on limited resources. Without the visibility and pressure of the Section 271 approval process, the priority of such improvements may be difficult to maintain. The IPUC will continue to monitor Qwest's performance and if evidence reveals problems due to a lack of adequate trained staff, the IPUC will seek to address such problems in the periodic reviews contained in the QPAP.

9. Change Management.

Qwest initiated an extensive overhaul of its change management procedures (CMP) shortly after the testing began. The test vendors were able to determine that the proposed structure and procedures of the revised CMP satisfied the criteria established for those processes, but were unable to verify whether Qwest "adhered to this process over time". CLEC comments basically focus on the lack of experience with the new procedures. Qwest indicates the procedures were implemented as developed, and that some experience exists with much of the revised CMP.

The development of the revised procedures and implementation of those aspects of the revised CMP that have been used demonstrate substantial progress by Qwest in meeting this requirement. While adherence to the process over time has not been demonstrated for a full point release of the OSS software, there is a record of following individual elements of the process as agreement was reached on each element. While this record is not as lengthy or perfect as desired, it is substantial, and perfection is not required.

One measure contained in the QPAP, PO-16, Timely Release Notifications, relates to an important element of the CMP. This measure will provide substantial information about Qwest's continued performance at following some of the procedures identified in the revised CMP, and the related financial penalties for noncompliance should minimize such instances.

The IPUC will continue to monitor implementation of the CMP process. Should Qwest fail to follow the revised CMP procedures, the IPUC will support corrective action, such as the development and inclusion into the QPAP of applicable PIDs.

The OSS Final Report also faulted Qwest for failing to provide support for all of its interfaces in its Stand Alone Test Environment (SATE). While Qwest has provided a separate test environment for most of the functions a CLEC would use, a few functions must be tested using the actual production system rather than a separate test environment. Qwest maintains experience has demonstrated that this is an adequate overall solution. The IPUC will continue to monitor this issue as well, and if experience demonstrates the use of the production environment for these limited functions causes problems, the IPUC will consider appropriate remedies.

The IPUC will continue to monitor Qwest's efforts to address OSS issues and believes monitoring can best be accomplished through participation in an ongoing multi-state collaborative effort, similar to the process that conducted the regional OSS test. IPUC staff has participated in an initial workshop and a number of conference calls in an effort to define and implement such a collaboration. While a number of issues remain to be resolved, the IPUC is confident a multi-state, long term Section 271 effort will be conducted. The IPUC expects to participate in such an effort and to use this effort to continue to address unresolved issues, as well as any that arise as competition develops.

ADDITIONAL QPAP COMMENTS

Additional late comments were filed with the IPUC by AT&T regarding changes to Qwest's QPAP, and Qwest filed a written response. The IPUC reviewed AT&T's comments and Qwest's response. AT&T claims the QPAP language in Section 13.6 is unclear regarding a CLEC's ability to recover damages in addition to those provided for in the QPAP. Qwest responded that the language does not preclude recovery of non-contractual remedies, except where those remedies duplicate remedies available under a contractual claim. The IPUC is satisfied that the language in the QPAP is consistent with the IPUC's decision.

AT&T also objected to the language in section 16.1, which AT&T claims limits the ability of the IPUC to make changes to the Plan. Qwest responded that the language merely preserves "the ordinary rights of judicial review that may be available with respect to any order of the Commission." The IPUC does not believe the section limits the ability of the IPUC to make changes to the Plan beyond those legal limits that already exist and apply to any Commission order.

OTHER ISSUES

The Commission in its Final Decision briefly discussed allegations raised by Touch America regarding Qwest's contracts with third parties to provide lit fiber on an exclusive basis to specific large customers. Some or all of these agreements were not disclosed in that they were not filed with state commissions as interconnection agreements, nor apparently did Qwest make the same terms available to competitor providers. Whether the agreements are in fact interconnection agreements that must be filed, and whether they provide for unlawful discriminatory treatment of competitors, are issues currently before the FCC in filings made by Touch America. Facts were not brought to the IPUC regarding the agreements to justify an independent investigation in Idaho, so the IPUC offers no substantive comment.

CONCLUSION

Clearly, with the vast numbers of issues in the extensive record created during the past two years on Qwest's compliance with the Section 271 requirements, it is possible to find less than perfect compliance by Qwest. The IPUC will continue to monitor Qwest's record if it receives interLATA approval from the FCC, and will require changes to Qwest's performance

assurance plan if changes are necessary to ensure competitors have a fair opportunity to thrive in Idaho. The IPUC generally is pleased with the record in its case, and with the effort of all who participated. The IPUC recommends the FCC approve Qwest's application for interLATA authority pursuant to Section 271.

Respectfully submitted this 3rd day of July 2002.



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EXHIBIT A

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF U S WEST)	CASE NO. USW-T-00-3
COMMUNICATIONS, INC.'S MOTION FOR)	
AN ALTERNATIVE PROCEDURE TO	)	COMMISSION DECISION
MANAGE ITS SECTION 271 APPLICATION.	)	REGARDING QWEST
	)	CORPORATION'S COM-
	)	PLIANCE WITH 47 U.S.C. § 271
	)	CHECKLIST

On February 8, 2000, Qwest Corporation, known then as U S WEST Communications, Inc., filed a Notice of Intention to File a Section 271 Application and a Motion for Alternative Procedure to Manage the Section 271 process. Section 271 of the Telecommunications Act of 1996, 47 U.S.C. § 271, establishes the means for a Bell Operating Company (BOC), which includes Qwest, to obtain authorization to begin providing in-region interLATA and interstate telecommunications services. A BOC may enter the interLATA long-distance market once the Federal Communications Commission (FCC) determines the BOC satisfies the requirements of Section 271. In making its determination, the FCC is required to "consult with the state commission of any state that is the subject of the Application in order to verify the compliance of the Bell Operating Company with the requirements of [Section 271]." 47 U.S.C. § 271(d)(2)(B). Thus it is left to each state to make a record and provide a recommendation regarding a BOC's compliance with Section 271.

Section 271(c)(2)(B) contains a checklist of 14 items relating to access and interconnection that a BOC must meet in each state where it provides local service. Titled "competitive checklist," the 14 checklist items set forth broadly stated requirements or categories for access and interconnection, each of which gives rise to hundreds of issues for resolution. In addition to satisfying the requirements of the competitive checklist, a BOC must satisfy other components of Section 271. For example, Section 271(c)(1) requires a BOC to provide access and interconnection to its network facilities pursuant to approved interconnection agreements (Track A), or to provide terms for access and interconnection in a statement of generally available terms (SGAT) by which a competitive provider may gain access to the BOC's network and facilities (Track B). The FCC must also determine that the BOC's entry into the interLATA

market is in the public interest. Finally, the BOC must show that it is prepared and able to offer interLATA services through a separate subsidiary pursuant to the requirements of Section 272.

By its Motion for an Alternative Procedure, Qwest asked the Commission to modify a Section 271 procedural schedule previously approved by the Commission in Order No. 27615, to permit Qwest to submit a test plan for its operational support system (OSS), and to permit parties to evaluate alternative approaches for considering each item on the 14 point checklist contained in Section 271. The Commission issued a Notice of Right to Intervene, Notice of Oral Argument, and Notice of Prehearing Conference, and convened a prehearing conference on March 21, 2000. The Commission heard arguments on Qwest's Motion and provided the parties an opportunity to discuss alternatives to processing Qwest's anticipated Section 271 Application.

On July 7, 2000, the Commission issued Order No. 28439 granting Qwest's Motion for approval of an alternative procedure to manage the Section 271 case. The Commission subsequently issued procedural Order No. 28450, specifying the Commission would join with other states in a multi-state effort "to conduct a joint process to develop a factual record and consider aspects of Section 271 through collaborative workshops." The state commissions retained an outside facilitator, John Antonuk of Liberty Consulting Group, to conduct the workshops, establish a record to be filed in each state, and to make recommended findings regarding Qwest's compliance with the Section 271 requirements. The facilitator was directed to conduct a number of workshops, after which "the facilitator will prepare and submit a report on the agreed upon and unresolved issues in each workshop, identify findings of fact and conclusions of law, differing views and resolution for the disputed issues and recommended findings of disputed issues." Order No. 28450, p. 2. The Commission provided an opportunity for parties to file within 10 days of the filing of the report "any proposed additional or revised findings of fact, conclusions of law or clarification of disputed issues." *Id.* Issues unresolved by the facilitator through the workshop process are submitted to the Commission for resolution by this process.

Pursuant to the direction of the state commissions, the facilitator conducted several workshops and filed reports on each of the checklist items contained in Section 271(c)(2)(B). The facilitator filed four separate reports beginning March 19, 2001. After each of the reports was filed, comments and objections were filed by Qwest Corporation, AT&T Communications

of the Mountain States, and the Commission Staff. Pursuant to the Commission's instructions, each report set forth all issues resolved by the parties through the workshop process, and identified those issues remaining in dispute regarding the relevant checklist items. Each report also included the facilitator's recommended solution for the disputed issues.

The Commission issued a Notice after each report was filed to notify interested parties that the filing had occurred, and that the Commission regarded "those issues identified in the report as undisputed as fully resolved through the workshop process." The Commission also notified the parties that it would schedule an oral argument on disputed issues. Beginning with its Notice issued June 8, 2001, the Commission notified the parties of the planned oral arguments, and by a Notice issued September 6, 2001, the Commission provided notice that the first oral argument addressing the disputed issues on the 14 checklist items would be held on September 27, 2001. The Commission convened the hearing for oral argument as set forth in its Notice. Only Qwest and the Commission Staff appeared at the oral argument on September 27, 2001.

The Reports filed by the facilitator and the oral arguments heard on September 27 relate only to the 14 checklist items in Section 271(c)(2)(B). The checklist items were addressed in the context of Qwest's SGAT, and so the focus of the workshops was the SGAT terms required to comply with the checklist items. Qwest accordingly has filed the SGAT with the reports showing the terms as they were developed through the workshops and subsequent reports. When completed, the approved SGAT will satisfy the Track B requirements, 47 U.S.C. 271(c)(1)(B).

Other reports filed or to be filed by the facilitator will address the public interest issues, the Track A requirements and the separate subsidiary requirement of Section 272. Included in the public interest issues will be evidence on whether Qwest has made its operational support system (OSS) amenable to competitors' needs, and on a quality performance assurance plan (QPAP) requiring Qwest to meet specific service standards for competitor providers. The Commission will entertain oral argument on the public interest issues, Track A, separate subsidiary requirements, the results of the OSS tests, and Qwest's QPAP, at a later date.

THE FACILITATOR'S REPORTS ON THE CHECKLIST ITEMS

Each of the reports filed by the facilitator is lengthy, containing a description of each issue resolved during the workshops and each issue remaining in dispute. For every disputed issue the facilitator stated the arguments and the evidence of the parties and recommended a resolution for the dispute. The number of disputed issues was reduced significantly, however, through written comments submitted by the parties after each report was filed with the Commission. In its comments Qwest stated its willingness to accept the facilitator's recommendation on most of the disputed items.

The facilitator's resolution for each resolved issue reflects careful consideration of the record and applicable regulations and laws, and the Commission need not discuss the issues resolved by the facilitator and agreed to by the parties. Instead, as with the issues resolved through the workshops, the Commission approves the resolution provided by the facilitator and regards as fully resolved those issues on which Qwest agreed to implement the facilitator's recommendation. On those issues, Qwest must implement the resolution precisely as stated by the facilitator.

As the result of Qwest's acquiescence to most of the facilitator's recommendations, and the absence of AT&T and other CLECs at the oral argument, very few issues remain for the Commission to resolve. Checklist Item No. 1 deals with interconnection and collocation issues. In his May 15, 2001 report, the facilitator identified 40 interconnection issues and 54 collocation issues resolved through the workshops. The facilitator recommended resolution for 12 remaining interconnection issues and 15 collocation issues that remain in dispute. After written comments were filed, however, the number of disputed issues was significantly reduced. During the oral argument, Qwest stated it was prepared to accept what the facilitator recommended in regard to interconnection issues, except for "one area of dispute and one area of clarification." Tr. p. 71.

Qwest identified the first area of dispute as Issue No. 6 in the facilitator's report under Checklist Item No. 1—interconnection--identified as Direct Trunked Transport in Excess of 50 Miles in Length. The issue arises in regard to Qwest's obligation to construct facilities to enable competitive carriers to connect to Qwest's facilities. Qwest's proposed language for its SGAT to limit its obligation to provide direct trunked transport to 50 miles in length. The

facilitator recommended the language not be included in the SGAT because Qwest “did not provide evidence to support a conclusion that it would not be able to recover the costs of longer trunks.”

In its written comments and at the oral argument, Qwest modified its requested language to provide for a dispute resolution in the event Qwest was asked to provide direct trunked transport in excess of 50 miles and the parties could not agree on cost sharing. In that event, Qwest asked that the parties bring the matter to the Commission for resolution. Tr. p. 71. Staff supported Qwest’s proposal to alter the facilitator’s recommended solution. Tr. p. 78.

The Commission will approve the SGAT language recommended by Qwest regarding direct trunked transport in excess of 50 miles. While the facilitator is correct in regarding it as a cost issue, it is reasonable to provide a means for resolution in the event the parties do not agree on sharing costs. Qwest may add the modification to its SGAT at Section 7.2.2.1.5 as set forth on page 11 of Qwest’s comments filed with the Commission on May 25, 2001.

Another issue of dispute arose as issue No. 9 under interconnection in the facilitator’s May 15, 2001 Report, identified as Interconnection at Qwest Access Tandem Switches. As initially proposed by Qwest, its SGAT Section 7.2.2.9.6 would have precluded interconnection at access tandem switches, allowing interconnection only at local tandem and end office switches. Qwest subsequently withdrew its opposition to interconnection at access tandem switches, and the facilitator’s report reflects the change. However, Qwest asked the Commission to approve what Qwest refers to as the 512 CCS rule. According to Qwest, 512 CCS (centum call seconds) is the equivalent traffic of a DS-1. The 512 CCS rule in Qwest’s SGAT would require a CLEC to move its traffic away from the access tandem to a direct trunk if traffic volume reaches the 512 CCS level. According to Qwest, the CLECs do not oppose the 512 CCS rule and no comments in opposition were filed with the Commission. The Commission therefore approves this clarification to Qwest’s SGAT language.

The only other issue Qwest identified as disputed in regard to Checklist Item No. 1 is identified as Disputed Issue No. 14, Collocation Intervals, under collocation in the facilitator’s May 15, 2001 Report. Collocation intervals are the time allowed Qwest to complete a particular request for collocation after receiving the request. The facilitator approved SGAT language

requiring a CLEC when requesting physical collocation to provide a forecast of anticipated collocation needs only if infrastructure modifications are required to be entitled to 90-day collocation interval. Qwest argued that a CLEC should be required to provide a forecast when requesting physical collocation, even when major construction is not required, to obtain the 90-day interval. Qwest contends its position is consistent with FCC orders addressing collocation intervals. Citing FCC standards allowing up to 150 days for collocation applications without forecasts, Qwest asserts the provisioning intervals “in its SGAT are either specifically approved or even more generous to CLECs than required by the FCC.” Qwest Comments, p. 15.

The Commission approves this proposal by Qwest to modify its SGAT language to allow a provisioning interval of up to 120 days for collocation where no forecast is provided by the CLEC. Qwest’s proposed intervals are within the collocation provisioning intervals allowed by the FCC, and no argument was presented to this Commission for creating a more stringent requirement. No other issues were raised by the parties, either in written comments or during the oral argument, regarding Checklist Item No. 1, Interconnection and Collocation.

Only one issue was raised by Qwest in regard to Checklist Item No. 2, Access to Network Elements. During the oral argument, Qwest indicated a section of its SGAT relating to OSS testing was misnumbered and provided the correct number for the section. In addition, Qwest informed the Commission that since the date it and AT&T had filed written comments, the parties had negotiated new language for Section 12.2.9.3 of its SGAT, and that Qwest had included the agreed upon language in its most recent SGAT filing. The Commission approves these adjustments to the Checklist Item No. 2 issues.

AT&T in its written comments presented an argument regarding Checklist Item No. 2. AT&T argues that, because the 1996 Telecommunications Act and FCC rules require an ILEC to provide access to unbundled network elements on the same terms as it provides them to itself, it follows that “Qwest must *build* UNEs for CLECs under the same terms and conditions that Qwest would build network elements for itself (or its retail customers) at cost-based rates.” AT&T Comments p.2. This argument was presented to and considered by the facilitator, and AT&T’s comments recognize the FCC has not interpreted the Act as broadly as AT&T requests. The Commission believes this issue was carefully and properly considered by the facilitator.

The SGAT language approved by the facilitator appropriately states Qwest's obligation to provide access by competitor providers to its UNEs.

In regard to Checklist Item No. 3, Access to Poles, Ducts, Conduits, and Rights of Way, only AT&T filed an exception to the recommendations for resolution of disputed issues provided by the facilitator. In its comments, AT&T contends the SGAT recommended by the facilitator does not go far enough to "explain the test options available to the CLEC to test Qwest and its OSS interfaces." AT&T Comments p. 13. The Facilitator recommended SGAT language stating that a "CLEC shall be entitled to testing that is reasonably necessary to accommodate identified business plans or operations needs." The Commission is satisfied the facilitator adequately addressed this issue, keeping in mind that Qwest's OSS is currently being put through a rigorous test process, and the Company will be subject to significant penalties for inadequate service through its QPAP. Should the results of the OSS test demonstrate a need to provide for ongoing test requirements, the Commission may revisit the SGAT on this issue. The Commission regards all issues in regard to Checklist Item No. 3 to be resolved.

Issues regarding Checklist Item No. 4, Access to Unbundled Local Loops, were addressed in the June 11, 2001 Report and the August 20, 2001 Report filed by the facilitator. During the oral argument, Qwest indicated it had not taken any issue with the recommendations made by the facilitator and would submit its SGAT with the language to conform to the facilitator's recommendations. Tr. p. 94. Staff did raise an issue under Issue No. 1, Standard Loop Provisioning Intervals, under Checklist Item 4. Noting the Qwest SGAT language allowed it 24 hours to make repairs and restore service, Staff stated the Commission's Customer Relations Rules require a local exchange provider to restore service to customers in 24 hours. To allow time for a CLEC to make repairs within the required time, Staff suggested it may be "appropriate for the Qwest SGAT in Idaho to provide for restoration of service in less than 24 hours, if necessary, to satisfy the Commission's Customer Relations Rules." Tr. p. 96. AT&T also argued in its comments that "to the extent that the standard interval proposed by Qwest impairs the CLEC's ability to meet any retail service quality standards imposed on the CLEC by state commissions, Qwest's standard is improper." AT&T Comments p. 28.

In response, Qwest stated that its retail repair intervals will be tracked as part of the OSS tests, and would also be part of the service performance standards included in its QPAP.

Qwest also argued that in most circumstances the repair by Qwest would restore service provided by the CLEC to the customer.

The Commission is satisfied that the SGAT language proposed by the facilitator is appropriate. Repair intervals will be tracked pursuant to the OSS testing and the QPAP. If significant problems arise in regard to restoring service to customers within 24 hours, or in regard to other service intervals Qwest provides to a CLEC, the Commission can review those issues as they arise in particular circumstances.

AT&T also raised several other issues regarding Checklist Item No. 4. The remaining Checklist Item No. 4 issues are identified by AT&T as (1) Spectrum Compatibility, (2) Conditioning Charge Refund, (3) Pre-Order Mechanized Loop Testing, (4) Access to LFACs and Other Loop Information Databases, (5) Line Splitting, (6) NIDs [Network Interface Device]. The Commission has reviewed AT&T's arguments on these issues, and the recommendations of the facilitator. In general the Commission is satisfied that the facilitator determined fair and appropriate resolutions of these issues, carefully considering the arguments in light of applicable laws and FCC rules. The Commission also notes, however, that the SGAT is an evolving document, and that changes may be appropriate in the future. For example, although the Commission is satisfied the SGAT language accommodates the FCC's definition of the NID and provides for access to it, the FCC may take a different view of the issue when Qwest's 271 application is before it. In that event, Qwest will be required to change its SGAT language in response to decisions rendered by the FCC.

In regard to Checklist Item Nos. 5 through 14, Qwest stated it would comply with the dispute resolutions provided by the facilitator on each item. Tr. pp. 99-101. Staff also raised no additional issues in regard to these Checklist Item requirements. AT&T in its filed comments did discuss issues regarding Checklist Item Nos. 5, 6, 7, 8, 11 and 13.

The first disputed issue AT&T identifies under Checklist Item No. 5—Unbundled Local Transport—is EUDIT/UDIT distinction. The FCC has determined dedicated transport to be a network element, and Qwest divides it into Unbundled Dedicated Interoffice Transport (UDIT) and Extended Unbundled Dedicated Interoffice Transport (EUDIT). As distinguished by Qwest, UDIT is a distance-sensitive flat-rated element, while EUDIT is flat-rated, non-distance sensitive. AT&T contends “the entire dedicated transport link from point A to point Z should be

based on a distance sensitive, flat rate charge.” AT&T Comments, p. 61. According to AT&T, the facilitator reduced the issue to a simple cost issue and concluded this is not the right forum for determining whether flat-rate pricing for EUDIT is appropriate. The Commission agrees with the facilitator. The facilitator’s task included ensuring that Qwest’s SGAT language is consistent with requirements set forth by the FCC, and the Commission is satisfied the SGAT language on this issue comports with current FCC requirements. The Commission notes that a UNE cost docket currently is open before this Commission and that AT&T is a party in that case. AT&T can and should present its EUDIT cost arguments in that proceeding.

In the remaining issues under Checklist Item No. 5, AT&T asks the Commission to direct wording changes to the SGAT, the first on Disputed Issue No. 2—Connecting UNEs to Finished Services, the second on Disputed Issue No. 3—Waiver of Termination Liability Assessments (TLAs). The Commission has reviewed the suggested wording changes, as well as the facilitator’s reasoning in proposing the language on these sections. The Commission is satisfied the facilitator considered AT&T’s arguments and proposed SGAT language that is consistent with current requirements of the FCC.

AT&T identified one disputed issue regarding Checklist Item No. 6, Unbundled Switching, disputed issue No. 2 in the facilitator’s August 20, 2001 report. The FCC has determined that unbundled local switching is a UNE that ILECs must make available, with one exception. The exception occurs where “incumbent LECs have provided nondiscriminatory, cost-based access to combinations of loop and transport unbundled network elements, known as enhanced extended link (“EEL”), requesting carriers are not impaired without access to unbundled switching for end users with four or more lines within density zone 1 in the top 50 metropolitan statistical areas (“MSAs”). AT&T Comments, p. 67, quoting *FCC Local Competition Order*, paragraphs 253 and 278. AT&T contends “Qwest is not in compliance with checklist item 6 if Qwest does not make unbundled switching available if an EEL is not available.” AT&T Comments, p. 69. AT&T does not demonstrate that the applicable SGAT language is inconsistent with FCC requirements, or point to evidence in the record to show that the EEL exception is applicable in Idaho. The Commission is satisfied with the facilitator’s report on this issue.

On Checklist Item No. 7—911/E911, Directory Assistance, Operator Services—AT&T did not make a specific recommendation for changes to proposed SGAT language, but only asks Qwest “to clarify how it intends to use [UNE] forecasts and whether it intends to build trunk to meet the CLECs' forecasted demands.” AT&T can ask Qwest directly for such clarification, and thus the Commission will not approve any changes to the facilitator’s recommendations for Checklist Item No. 7.

Regarding Checklist Item No. 8—Directory Listings—AT&T requested the Commission approve a wording change to SGAT Sections 10.2.4.24 and 10.2.4.25. AT&T noted that the facilitator approved adding the word “contractor” after the word “affiliate” for Section 10.2.4.26, and argued that the same change should be made for the other two sections for “consistency and continuity.” The Commission agrees, and thus approves adding the word “contractor” to Sections 10.2.4.24 and 10.2.4.25. There are no other disputed issues in regard to Checklist Item No. 8.

AT&T also raised issues regarding Checklist Item Nos. 11 and 13. Checklist Item No. 11 is Local Number Portability (LNP). To satisfy the LNP requirement, AT&T states Qwest “must demonstrate that it provides LNP with minimum service disruptions and without impairment of quality.” AT&T Comments, p. 3. The facilitator recommended specific changes to the SGAT on this issue, and stated “upon making the changes, Qwest can be deemed to have met its burden of proof, subject to the completion and commission consideration of the results of any OSS testing that may relate to this item.” AT&T disagrees that the changes recommended by the facilitator “are sufficient to put Qwest in compliance with Checklist Item 11,” and argues that “[u]ntil Qwest demonstrates satisfactory performance in provisioning LNP, Qwest should not be deemed to be in compliance with Checklist Item No. 11.” AT&T Comments, p. 4.

The Commission agrees in principle with AT&T’s argument, but also agrees with the facilitator’s recommendation. The SGAT language for LNP may be sufficient, but the SGAT itself does not demonstrate that Qwest is actually providing LNP as required. The OSS test results will provide important information regarding the performance of Qwest on this and many other issues. If the OSS test results demonstrate Qwest is not able to provide LNP “with minimum service disruptions and without impairment of quality,” the Commission will not recommend to the FCC that Qwest meets the requirements of Checklist Item No. 11.

The final issues presented by AT&T relate to Checklist Item No. 13, Reciprocal Compensation. The Commission is aware of, and AT&T refers to, some of the litigation over reciprocal compensation, as well as the FCC's shifting position on this issue. The facilitator also was mindful of the guidance provided by the FCC, including its latest order issued April 27, 2001. The Commission has reviewed AT&T's arguments on this issue, and for present purposes of Qwest's SGAT, is satisfied with the recommendations made by the facilitator. The Commission also believes issues of reciprocal compensation should be brought to the FCC, and AT&T will have an opportunity to raise the issue when the FCC is considering Qwest's Section 271 application.

CONCLUSION

The Commission is prepared, when consulted by the FCC, to report that Qwest satisfies the access and interconnection requirements of the competitive checklist in 47 U.S.C. § 271(c)(2)(B), so long as Qwest revises its SGAT as set forth in this decision and as may be necessary as this case proceeds to its conclusion. The Commission's final recommendation to the FCC also will depend on the final development of Qwest's QPAP, on the successful completion of the OSS test process, and on final resolution of all issues relating to Track A, public interest, Section 272 and general terms and conditions.

It is clear, upon review of the extensive record resulting from the workshops and the facilitator's lengthy reports, that all parties involved in this case have made tremendous contributions to the process. The Commission is particularly pleased with the careful analysis employed by the facilitator to resolve very technical disputes. The Commission supports the continued cooperation and diligent efforts of the parties as they proceed through this complicated case.

DATED at Boise, Idaho this

day of November 2001.

PAUL KJELLANDER, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

Vld/O: USW-T-00-3_ws

EXHIBIT B

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF U S WEST)
COMMUNICATIONS, INC.'S MOTION FOR) CASE NO. USW-T-00-3
AN ALTERNATIVE PROCEDURE TO)
MANAGE ITS SECTION 271 APPLICATION.) COMMISSION DECISION ON
) QWEST'S PERFORMANCE
) ASSURANCE PLAN
)**

BACKGROUND

In 1984, local exchange telephone companies divested by AT&T and referred to as Bell Operating Companies (BOCs) were barred from providing long-distance services outside specific Local Access Transport Area (LATA) boundaries. The Telecommunications Act of 1996 allows that restriction to be lifted by the Federal Communications Commission (FCC) if a BOC meets certain requirements specified in Section 271 of the Act. For example, Section 271(c)(2)(B) contains terms for access and interconnection to its network a BOC must provide to competitor telecommunication companies. The FCC must also find that the BOC request "is consistent with the public interest, convenience and necessity." 47 U.S.C. § 271(d)(3)(C).

The FCC evaluates the BOC's satisfaction of the access and interconnection and other requirements at the time the BOC's application is filed, and the Act does not call for ongoing review by the FCC once it grants interLATA authority to the BOC. Accordingly, to insure the BOC continues to satisfy the Section 271 requirements, the FCC has determined the public interest may require the BOC to have a Performance Assurance Plan (PAP or Plan) in place.¹ A PAP provides specific standards for the BOC's delivery of services to competitor telecommunications providers and automatic penalties if the standards are not met.

The development and review of Qwest's Plan (QPAP) began in earnest in August 2000 in a collaborative process created by the Regional Oversight Committee (ROC). The ROC is comprised of representatives of the state commissions that oversee Qwest's local exchange service. The ROC collaborative process included five workshops, numerous conference calls

¹ The parties and Commission have used the acronym QPAP for either "Quality Performance Assurance Plan" or "Qwest Performance Assurance Plan," see Order No. 28788. Hereafter, PAP will refer to Performance Assurance Plans in general, and QPAP will refer to Qwest's PAP.

and exchanges of proposals, supporting data, and other information designed to seek the creation of a consensus PAP. The ROC process terminated in May 2001, with many significant issues resolved by consensus, but also with many issues remaining unresolved.

Qwest thereafter on July 16, 2001, filed its Plan with this Commission, stating it “is voluntarily submitted for the purpose of demonstrating to the [FCC] that Qwest will have compelling economic incentive to continue meeting the requirements of Section 271 after it obtains approval to offer long distance services in the state.” Qwest’s Filing of QPAP p. 1. Thus, despite disagreement over some of the Plan’s terms by other telecommunications companies and Qwest competitors, Qwest was apparently satisfied its Plan would pass muster with the FCC. Rather than let the Plan stand as filed, however, the Commission determined, “along with the other states in the Section 271 proceeding, to include evaluation of the QPAP in the Section 271 process.” Order No. 28788, issued July 23, 2001. The Commission asked the Facilitator coordinating the multi-state Section 271 case to receive evidence and conduct hearings on the Plan, and provide a written report to the state commissions. In this way, evaluating the QPAP “as part of the Section 271 requirement will provide a record for the FCC to determine whether Qwest has satisfied the public interest requirements for Section 271 approval.” Order No. 28788, p. 3.

Pursuant to the schedule adopted by the Commission, the Facilitator conducted hearings, received written comments and briefs, and filed his QPAP report in October 2001. After written comments on the report were filed, the Commission on November 9, 2001, issued a notice that the QPAP report and comments had been filed. On January 3, 2002, the Commission issued a Notice of Hearing on Oral Argument for the QPAP, which convened on January 24, 2002.

THE FACILITATOR’S REPORT

The Facilitator in his report described the ROC collaborative process that preceded inclusion of the QPAP in this case. The Facilitator found the ROC QPAP proceeding to be “comprehensive, well conducted, subject to wide participation, and thorough in addressing the broad range of issues and subjects appropriate to a post entry plan expected by the FCC.” QPAP Report, p. 2. The Plan blueprint put forward by Qwest in the ROC proceeding was the PAP approved by the FCC for Southwestern Bell in its Section 271 application for Texas. The Facilitator identified significant changes agreed to in the ROC collaborative, noting that the

QPAP was changed “significantly and positively to address discussions occasioned by that collaborative.” QPAP Report, p. 4.

The Facilitator identified the standard of review provided by the FCC for its evaluation of Plans, described as a “zone of reasonableness” standard. According to the reasonableness test, a plan should meet five characteristics:

Meaningful and significant incentive to comply with designated performance standards.

Clearly articulated and predetermined measures and standards encompassing a range of carrier-to-carrier performance.

Reasonable structure designed to detect and sanction poor performance when and if it occurs.

Self-executing mechanism that does not open the door unreasonably to litigation and appeal.

Reasonable assurance that the reported data are accurate.

QPAP Report, p. 4.

To further clarify review of a plan for meeting the objectives identified by the FCC, the Facilitator also stated eight questions for consideration in a plan review:

Does it comport with the cornerstone elements common to previous plans existing under approved 271 applications?

Do the gives and takes that distinguish it from those other plans balance out on a net basis?

Does the Plan provide adequate compensation for actual harm for which CLECs could reasonably expect to be compensated if their relationship with Qwest were more typical of commercial arrangements of similar size, complexity, and mutual risk and opportunity?

In the final analysis, will the Plan (considering not just those elements designed to compensate CLECs for harm) provide sufficient incentive for Qwest to ‘continue to satisfy the requirements of Section 271 after entering the long-distance market’ as the FCC put it in ¶ 275 of the SBC Kansas/Oklahoma order, after it may receive 271 approval?

Will the Plan provide that incentive in a manner that does not place any more strain than is necessary on the sound principal that damages should bear a reasonable relationship to harm caused?

Do the incentive aspects of the Plan (i.e., costs that go beyond the compensating CLECs for actual harm) impose a price on in-region, inter-LATA entry that it would be irrational for a BOC to pay for the privilege for such entry, recognizing that the range of expected values of potential payments, not a theoretical maximum with minimal likelihood of occurring, is much more meaningful?

Does the Plan adequately respond to any unique circumstances proven by the evidence to be applicable here?

Are there administrative or procedural details in the Plan that are not sufficiently functional, and that can be repaired without a major shift in balance?

QPAP Report, p. 6.

With this standard of review in mind, and after considering the evidence presented, the Facilitator recommended changes to the QPAP in 29 different sections. Among the more significant changes, the Facilitator recommended allowing movement of the cap on the total financial exposure to Qwest, establishment of a QPAP administration process accessible to multiple states, and providing for minimum payment penalties to CLECs with annual order billing of less than 1,200. With the changes recommended in his 88 page report, the Facilitator is satisfied the QPAP meets the FCC's zone of reasonableness standard.

THE PARTIES' WRITTEN COMMENTS

Written comments in response to the Facilitator's Report were filed at the Commission by Qwest, AT&T, WorldCom, Covad, and the Commission Staff. Qwest called its comments "Errata and Replacement Filing," indicating its acceptance of, if not agreement with, nearly all of the recommendations made by the Facilitator in his report. Qwest addressed each of the recommendations and stated how it was addressed in the latest QPAP, which Qwest filed with its comments. Qwest argued in conclusion that its QPAP, improved by CLEC negotiations and state Commission Staff recommendations, "is more than sufficient to meet the FCC's expectations and assure that FCC approval of Qwest's Application for 271 relief is in the public interest." Qwest Comments, p. 17.

The Commission separately discusses issues addressed by the commenters and makes its findings in the following section of this decision. Recommendations made in the

Facilitator's report that were not disputed or are not specifically addressed by the Commission in this decision are adopted by the Commission.

DISCUSSION OF DISPUTED ISSUES

1. Meaningful and Significant Incentive (QPAP Report, pp. 12-45). The QPAP as Qwest proposed it placed at risk no more than 36% of Qwest's annual net income from local exchange services in each state. For Idaho, that amounts to approximately \$24 million based on Qwest's 1999 ARMIS report for local services. The Facilitator recommended the cap be allowed to increase four percentage points upon order of the Commission in cases where the cap would have been exceeded for any consecutive period of 24 months. The Facilitator also recommended the cap be allowed to decrease the same amount by Commission order for any consecutive period of 24 months which produces calculation of total payments that is eight or more percentage points below the cap amount.

In their comments, AT&T, Covad and the Commission Staff recommended changes that affect the total payment liability represented by the 36% cap. Staff and Covad recommended the data on which the cap amount is based be updated and not fixed to the 1999 ARMIS report. AT&T argued that the 36% cap is inadequate and should be raised to at least 44% of net revenue from Qwest's local service, and in any event, that the cap should not be allowed to reduce below 36%. Covad also argued that the 36% cap "will result in under compensation of CLECs." Covad Comments, p. 5.

The Commission approves the recommendation made by the Facilitator for a 36% cap, with the possibility that it will increase after a Commission determination based on a 24-month performance period by Qwest. The Facilitator and the parties recognize that the FCC has approved Plans that contain a 36% net revenue cap on the aggregate amount for penalties that might be incurred by the BOC. Thus it is difficult for this Commission to conclude that a similar cap on the potential liability for Qwest does not meet the FCC's zone of reasonableness test. In addition, it is possible for the cap to increase if Qwest fails to provide adequate service to the CLECs. Finally, the QPAP will be reviewed six months after it becomes effective and again at two years from its effective date. Those reviews will enable the Commission to evaluate the continued propriety of the QPAP cap at that time.

The Commission agrees with the comments of Covad and Staff, however, regarding the currency of information on which the cap is based. The cap amount should be revised each year based on the Company's most recent report of net intrastate revenues for Idaho.

a. Compensation for CLEC Damages. Pages 26 through 36 of the QPAP report address compensation for CLEC damages, including whether an objective of the Plan and its penalties is to compensate CLECs for actual damages that might result from Qwest's poor performance. Related issues are the question of compensating CLECs for contractual damages, whether it is appropriate for the QPAP to liquidate such damages, whether CLECs need to provide evidence of actual harm, whether the QPAP should preclude other CLEC remedies in exchange for automatic penalty provisions, and whether Qwest should be allowed to make an offset of damages by an amount paid from the QPAP provisions. These issues were addressed by AT&T and Covad in their comments.

In his review, the Facilitator discussed applicable provisions in the Texas PAP and in a special master report prepared for the Colorado PAP. Those provisions allow for limiting recovery of damages based on contract theories of action when a CLEC has been compensated by payments resulting from the PAP. A CLEC that elects PAP remedies would not be precluded from seeking recovery from non-contractual theories of liability, for example, by federal enforcement under Section 271(d)(6), or anti-trust, tort and consumer protection remedies.

The Commission finds that the recommendations by the Facilitator on these points are appropriate. The Commission is not convinced, however, that the right of offset provided to Qwest in the QPAP is appropriate because it grants to Qwest too much authority to determine the offset. The Commission thus approves the following language adopted by the Colorado and Montana Commissions for the QPAP in those states:

If for any reason a CLEC agreeing to this QPAP is awarded compensation for the same harm for which it received payment under the QPAP, the court or other adjudicatory body hearing such claim may offset the damages resulting from such claim against payments made for the same harm.

b. Incentive to Perform. The QPAP is intended to provide the incentive for Qwest to perform at least on a level of set standards or measures, called Performance Indicator Definitions (PIDs), and provides for payments to the CLECs or states should Qwest fail to meet the set standards. Measures in the QPAP are divided between Tier 1, whose accompanying penalties

provide compensation to CLECs, and Tier 2, whose penalties derive to the states to fund administration of the QPAP, as discussed later in this decision.²

The issues under this heading in the report address the use of Tier 2 payments, a three month trigger for Tier 2 payments, limiting escalation of QPAP remedies to six months, and splitting Tier 2 payments between CLECs and the state. These issues were addressed by AT&T, Covad and the Commission Staff in their written comments. AT&T objected to the Facilitator's recommendation that a portion of Tier 1 payments may be used to help fund a special fund available for states participating in a common administration effort. AT&T and Staff objected to the three-month trigger for Tier 2 payments, recommending that Tier 2 payments be available for each month of non-compliance by Qwest. AT&T and Commission Staff disagreed with the Facilitator's capping of the escalation of QPAP penalties to six months, at which point the payment amounts would continue for continued bad performance, but would level out.

The Commission finds that Tier 1 payments for CLECs should not be used for administration provided by the special fund, and that all Tier 2 payments should be available for the special fund administration. Sections 11.3.1 and 11.3.2 of the QPAP must be amended to incorporate these changes. The Commission agrees with the Facilitator's recommendation that Idaho and other state commissions participate in a joint effort to oversee administration of the QPAP. Qwest has agreed to initially fund the special administration fund with \$500,000. That amount may be reduced if less than six states participate in the joint administration effort. Section 11.3.3 of the QPAP must be modified to reflect Qwest's commitment to deposit to the special fund. The Commission directs the Staff to pursue this matter with other state commissions participating in the multi-state Section 271 proceeding and propose a collaborative effort for administering the QPAP provisions. The Commission otherwise approves the Facilitator's recommendations on these points.

2. Clearly Articulated and Predetermined Measures (QPAP Report, pp. 46-59). Most of the comments in this category were made by Staff, whose primary recommendation related to allowing performance measures to be added or changed in the QPAP. Similarly, Covad argued that performance indicators "that are converted from a diagnostic status to a benchmark or a parity standard prior to Qwest receiving effective Section 271 relief will be

² Should the penalties from Tier 2 measures ever exceed the amount required to provide special fund administration, the Commission will then determine the best use of the excess funds.

incorporated in the QPAP.” Covad Comments, p. 19. WorldCom argued that measures for the provisioning of special access circuits should be included in the QPAP.

The Commission will not address each performance measure discussed by the parties, because the significant point is that the QPAP must have some flexibility both before and after it becomes effective. The Commission agrees that diagnostic measures that are converted to permanent measures should be so designated in the QPAP. The Commission also leaves open the possibility that completion of the ROC OSS test will result in proposed changes to some performance measures that should be incorporated into the Plan. Additionally, as will be further discussed, the Commission approves the QPAP’s provision for a review in six months to determine effectiveness of measurements and to allow for changes. The FCC in its review of the Texas PAP endorsed flexibility to make alterations, saying the “continuing ability of the measurements to evolve is an important feature because it allows the plan to reflect changes in the telecommunications industry and in the [state telecommunications] market.” We are satisfied the Facilitator’s recommendations for this part of the QPAP are appropriate, so long as measures are allowed to change prior to the effective date of the QPAP, and thereafter by the review process described in the Plan.

3. Structure to Detect and Sanction Poor Performance as It Occurs (QPAP Report, pp. 59-71). The comments by AT&T, Covad and the Staff regarding this section of the QPAP report addressed limitations on the review that will occur after six months, low volume critical values, and 100% caps of interval measures. The QPAP itself calls for a review six months after it becomes effective, but limits it to (1) the addition, deletion or changes of measurement, (2) change of benchmark standards to parity standards, (3) changes in weighting of measurements, and (4) movement of measures from Tier 1 to Tier 2. The Facilitator noted the Texas PAP contained similar limitations on the six-month review, thus preventing a general re-opening of the plan to amendment. The Facilitator also noted the more general review scheduled for three years after the effective date, and recommended the broader review instead occur at two years.

The Commission approves the limitations placed on the initial review at six months, except that the QPAP should leave open the possibility that the Commission may broaden the review if necessary to respond to circumstances arising from actual experience with the QPAP. In addition, Section 16.1 of the QPAP describing the six-month review does not permit changes without Qwest’s agreement. That language must be modified to state that Qwest will make

changes if the Commission so directs, whether Qwest agrees or not with the changes. The Commission approves the remaining recommendations made by the Facilitator for this section of the QPAP.

4. Self-Executing Mechanism (QPAP Report, pp. 71-86) and Other Issues (QPAP Report, pp. 86-88). AT&T in its comments briefly addressed issues covered in these portions of the QPAP, specifically recommending that (1) the interest rate applicable to any QPAP payments should be the rate set by a state commission or law rather than the prime rate, (2) the effective date for the QPAP should be the date Qwest files its Section 271 application with the FCC rather than the date its application is approved, and (3) the QPAP should state explicitly that Qwest will not be able to recover in rates the payments it makes under the QPAP. On the last point, the Facilitator stated, “neither the FCC nor the state commissions require guidance in how or when to determine what to do about QPAP payment recovery in rates.”

The Commission concurs with the Facilitator’s recommendations on these points. Because the QPAP eventually will be effective in several states, using one interest rate for payments where applicable will ease the administration burden, and the prime interest rate is appropriate for this purpose. Tying the effective date of the QPAP to the date Qwest achieves interLATA authority is logical because the QPAP is intended to measure and direct Qwest’s performance once it receives Section 271 authority. Finally, we agree with the Facilitator that the QPAP need not state whether Qwest can seek recovery of QPAP payments in customer rates.

CONCLUSION

It is clear that Qwest and many other parties have significantly contributed to development of a QPAP to satisfy the objectives described by the FCC. The current QPAP began with a Plan already approved by the FCC, was tested and revised through a lengthy collaborative process, then was submitted for dispute resolution to the Facilitator, and finally was revised through comments and decision of this Commission. On this record the Commission believes the QPAP is well on its way to meeting the FCC’s zone of reasonableness standard. The Commission is not yet prepared to recommend approval of the QPAP, however, because changes must still be made. First, Qwest must make the changes set forth in this decision. Second, Qwest must also allow for the change in QPAP measurements that might come from completion of the OSS test process. Finally, the Commission believes it is in Qwest’s interest that the QPAP, to the extent possible, be uniform among all the states in its local service area.

The Commission accordingly directs Qwest and the Staff to monitor other state commission activity on the QPAP and report to this Commission significant changes ordered by other states. For example, according to supplemental comments filed by AT&T, the Montana and Wyoming commissions recently issued preliminary decisions on the QPAP, which may lead to changes to the QPAP that should be included in the Idaho Plan. The Commission will accept additional supplemental QPAP comments that are limited to recommending changes resulting from the OSS test or significant changes ordered by other participating state commissions.

DATED at Boise, Idaho this day of March 2002.

PAUL KJELLANDER, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

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EXHIBIT C

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF U S WEST)	
COMMUNICATIONS, INC.'S MOTION FOR	)	CASE NO. USW-T-00-3
AN ALTERNATIVE PROCEDURE TO)	
MANAGE ITS SECTION 271 APPLICATION.	)	COMMISSION DECISION ON
	)	QWEST CORPORATION'S
	)	COMPLIANCE WITH SECTION 271
	)	PUBLIC INTEREST AND TRACK A
	)	REQUIREMENTS AND SECTION
	)	272 STANDARDS

INTRODUCTION

When the Federal Communications Commission (FCC) reviews an application by a Bell Operating Company (BOC), which includes Qwest, for authority to provide interLATA telecommunication services, the FCC may not give its approval unless it finds “that the requested authorization is consistent with the public interest, convenience and necessity.” 47 U.S.C. § 271(d)(3)(C). The FCC has determined the public interest standard in Section 271(d)(3)(C) requires a Performance Assurance Plan (PAP) that provides detailed performance standards for the BOC’s delivery of services to competitor telecommunications providers and automatic penalties if the standards are not met. The Commission issued a decision on Qwest’s PAP on March 7, 2002. This decision examines the public interest issues outside of the PAP.

The FCC must also find that “the requested authorization will be carried out in accordance with the requirements of Section 272.” 47 U.S.C. § 271(d)(3)(B). Section 272 requires the BOC to provide interLATA services, once approved, through a separate affiliate independent from the BOC. 47 U.S.C. § 272(a) and (b). In this decision the Commission also reviews the record created on Qwest’s compliance with Section 272.

Finally, the Commission in this decision addresses issues relevant to the dual tracks to interLATA approval set forth in Section 271(c)(1). Under Paragraph A of that section (“Track A”), Qwest may obtain interLATA authorization, assuming all other Section 271 requirements are met, if it “has entered into one or more binding agreements that have been approved under section 252 specifying the terms and conditions under which the Bell operating company is

providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service . . . to residential and business subscribers.” In other words, Qwest must actually be providing access to its network to another telecommunications company pursuant to an approved interconnection agreement, and the other company must be providing service to residential and business customers. The Track B route to FCC interLATA authorization, Paragraph B of Section 271(c)(1), does not require actual interconnection between Qwest and another company’s facilities. Instead, Qwest must have a valid Statement of Generally Available Terms (SGAT) setting forth terms for other providers to interconnect to Qwest’s network and facilities. This decision, in addition to public interest and Section 272 standards, reviews the record on the Track A requirements and residual issues on Qwest’s SGAT.

BACKGROUND

On February 8, 2000, Qwest Corporation, formerly U S WEST Communications, Inc., filed a Notice of Intention to File a Section 271 Application and a Motion for Alternative Procedure to Manage the 271 Process. In response the Commission issued Procedural Order No. 28450 approving its participation in a multi-state workshop process to develop a record on Qwest’s compliance with the Section 271 requirements.

The seven states participating in the multi-state workshop process retained an outside Facilitator “to conduct a joint process to develop a factual record and consider aspects of Section 271 through collaborative workshops.” The Facilitator conducted workshops to receive evidence and establish a record to be filed in each state. The Facilitator was directed to prepare and submit a report on the agreed upon and unresolved issues in each workshop and make recommendations for the resolution of disputed issues.

The Facilitator filed two reports for the issues relevant to this decision. The first report was filed September 21, 2001, and addressed general terms and conditions for Qwest’s SGAT, Section 272, and Track A requirements. The second report was filed October 22, 2001, and addressed public interest issues, exclusive of the QPAP.

Interested parties were provided an opportunity to file written comments, including exceptions, with the Commission within ten days of the filing of the reports. Written comments were filed by Qwest, the Commission Staff, AT&T Communications of the Mountain States, Inc., and Touch America, Inc. The Commission established a hearing for oral argument on

December 3, 2001, notifying the parties that the oral argument would be “limited to Track A requirements, separate affiliate requirements of Section 272, general terms and conditions, and the public interest issues exclusive of the QPAP.”

GENERAL TERMS AND CONDITIONS

The general terms and conditions component of the Facilitator’s report and record refers to terms for Qwest’s Statement of Generally Available Terms (SGAT) for access and interconnection to its network. The competitive checklist in Section 271(c)(2)(B) sets forth 14 different standards for interconnection a BOC must meet and then provide in an SGAT to satisfy the Track B option of Section 271. The SGAT must contain terms beyond those required to address the 14 checklist standards, however, to answer administrative details for a complex business arrangement between two competitors. The general terms and conditions component was added to the workshop proceedings and Facilitator’s report when it became clear the topic was significant and included numerous issues the parties were unable to resolve by a consensus.

The Facilitator’s report filed September 21, 2001, addressed the general terms and conditions record, and identified 19 issues resolved through the workshops. Eighteen issues remained for resolution by the Facilitator, including SGAT language for resolving conflicts between the SGAT and other documents, and the ability of a competitor to opt in to other effective interconnection agreements with Qwest.

In its comments filed on general terms and conditions, Qwest stated, although it did not agree with all the proposed resolutions, it “will implement the [Facilitator’s] report in full and file SGAT language that complies with the report.” Qwest Comments p. 4. One issue was not resolved by the report, however, because “the record did not allow an assessment of Qwest’s compliance with FCC requirements applicable to change management process.” Facilitator’s Report Summary p. 6. Qwest’s comments state that discussions on the change management process (CMP) were still occurring and that the parties have “agreed to report on the progress of these discussions at later dates.” Qwest Comments p. 12. At the oral argument, Qwest stated the CMP “will be addressed in detail in the ROC OSS report, and Qwest does not believe there is anything further needed from this Commission until receipt of the ROC OSS Report.” Tr. p.110-111. The ROC OSS Report refers to the testing of Qwest’s operational support system (OSS) under the auspices of the Regional Oversight Committee (ROC). The final draft report is scheduled for filing on April 19, 2002.

In its written comments regarding general terms and conditions, Staff stated it “supports the Facilitator’s findings and recommends that this Commission adopt them as set forth in the report.” Staff Comments p. 3. The only other written comments regarding the general terms and conditions issues were filed by AT&T. AT&T in its comments first states a general complaint that the Facilitator’s report and the workshops on general terms and conditions “shift the burden of proof to the competitive local exchange carriers (CLECs) to prove Qwest’s non-compliance and completely ignores the fact that Qwest provided little or no evidence in support of its SGAT claims of compliance.” AT&T Comments p. 1. AT&T also asserts generally that the Facilitator’s report “highlights instances wherein the Facilitator ignores the law, misunderstands the SGAT language or speculates about facts not in evidence in the record.” AT&T Comments p. 3.

The Facilitator properly characterized the SGAT as “an offer for an agreement between Qwest and any requesting CLEC.” Facilitator’s Report p. 15. The general terms and conditions part of the SGAT governs the relationship between the CLEC and Qwest, but are themselves not part of the Section 271 checklist requirements. Facilitator’s Report p. 15. In this context, and without greater specificity in AT&T’s complaint, there is no basis for AT&T’s contention that the Facilitator shifted the burden of proof on the general terms and conditions. The Commission is generally well pleased with the Facilitator’s understanding and conduct of the workshop process, as well as the many complex issues involved.

AT&T also raised several specific objections to the Facilitator’s report on general terms and conditions. For example, AT&T argued its evidence shows that Qwest has not complied with certain “pick and choose” requirements in the Telecom Act. During the workshops AT&T presented evidence of Qwest’s dealings with AT&T in Wyoming, “showing Qwest’s abusive conduct of trying to make AT&T opt-into more and wholly unrelated contract provisions than were required or requested to obtain the particular interconnection provision needed.” AT&T comments p. 7. AT&T conceded “the SGAT language itself was not the problem,” and instead its complaint was on Qwest’s apparent business practice.

The Facilitator’s report reflects careful and thorough consideration of the issues raised by AT&T. The Facilitator either rejected or addressed these specific issues in proposing resolution to the general terms and conditions disputes. After reviewing the report and record, as

well as AT&T's written comments, the Commission is satisfied with the proposed resolution provided by the Facilitator on the issues identified by AT&T.

The Commission does approve, however, two specific recommendations made by AT&T. First, AT&T noted that the parties were still working at the close of the workshops toward consensus on certain SGAT definitions, and that the agreed upon definitions should be included in the most recent SGAT. The Commission agrees that the SGAT should be updated with any definitions or other terms on which Qwest and the CLECs were able to agree. Second, the Commission approves the clarifying language proposed by AT&T for Section 5.12.2 of the SGAT addressing the effect of the sale of exchanges by Qwest. AT&T recommended the word "unaffiliated" be stricken in its reference to the parties to which Qwest may transfer an exchange. In addition, AT&T recommends that the phrase "completion of" be included in its reference to the timing for the notice required of a transfer. With these changes the first part of Section 5.12.2 is as follows:

In the event that Qwest transfers to any ~~unaffiliated~~-party exchanges including end users that a CLEC serves in whole or in part through facilities or services provided by Qwest under this SGAT, the transferee shall be deemed a successor to Qwest's responsibilities hereunder for a period of 90 days from notice to CLEC to completion of such transfer or until such later time as the Commission may direct pursuant to the Commission's then applicable statutory authority to impose such responsibility either as a condition of the transfer or under such other state statutory authority as may give it such power.

With these changes, the Commission approves and adopts the Facilitator's recommendations on the resolution of disputes for the SGAT general terms and conditions.

TRACK A

The term Track A refers to Paragraph A of Section 271(c)(1) entitled "Presence of a Facility's Based Competitor." That paragraph provides as follows:

A Bell Operating Company meets the requirement of this subparagraph if it has entered into one or more binding agreement that has been approved under Section 252 specifying the terms and conditions under which the Bell Operating Company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing provider of telephone exchange service (as defined in Section 3(47)(A), but excluding exchange access) to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own

telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier.

In his report, the Facilitator identified the four issues set forth by the FCC in evaluating the evidence on the requirements to satisfy Track A. The four issues are (1) whether the BOC has signed one or more binding agreements that has been approved under Section 252, (2) whether the BOC is providing access and interconnection to unaffiliated competing providers of telephone exchange service, (3) whether there are unaffiliated competing providers of telephone exchange service to residential and business customers, and (4) whether the unaffiliated competing providers offer telephone exchange service exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange facilities in combination with the resale of the telecommunication services of another carrier. Facilitator's Report p. 30. It is not necessary that competitor providers have achieved a specific market share before Track A can be satisfied. The Facilitator noted that "the FCC has already decided that it will not impose a market share test and it has deemed Track A to be satisfied at very low CLEC levels of penetration into the residential market." Facilitator Report at p. 35.

The Facilitator reviewed the evidence on each of the four Track A requirements and concluded that Qwest had not presented evidence to satisfy the third element. Specifically, the Facilitator stated that, at least for Idaho, "Qwest should be found to have not met Track A standards, for reasons of its failure to provide substantial evidence that competitors were serving residential end-users." Facilitator's Report p. 3.

Qwest requested an opportunity to supplement the record to demonstrate the existence of competitor providers for Idaho residential customers, and the Commission granted Qwest's request in Procedural Order No. 28866. Qwest subsequently filed supplemental evidence consisting of affidavits and documentation to demonstrate competition in some residential markets in Idaho. The supplemental evidence indicates that Leap Wireless, a facilities based broad-band PCS carrier is offering its "Cricket" brand wireless service as a substitute to wireline local exchange service. In addition, Qwest's supplemental information identifies McLeod Telecommunications and Project Mutual Telephone Company as providing residential services that satisfy the requirement of actual competitive residential services for Track A approval.

Written comments were filed regarding the Track A requirements by Qwest, AT&T and the Commission Staff. AT&T's comments in part are specific to Montana and Wyoming. The only issue it identifies for a more general application is regarding the method for estimating CLEC facilities based line counts. That issue was presented to and fully considered by the Facilitator, and the Commission approves the resolution in the Facilitator's report.

In its written comments Staff stated that, despite the supplemental information provided by Qwest, it still has reservations regarding the level of residential competition in Idaho. Staff identified the lack of established prices for Qwest's unbundled network elements as a possible explanation for a relatively low residential penetration level by CLECs. Staff stated it "is not convinced the record demonstrates that Qwest has fully and irreversibly opened the local telecommunications market to competition for residential customers." Staff October 20, 2001 Comments p. 7. Staff revisited the issue of market penetration in later comments, however, after Qwest filed its supplemental information. After noting that the existence of competition in the residential telecommunications market in Idaho is "de-minimus," Staff nonetheless stated, "based upon the guidelines established by the FCC, Qwest seems to have met its obligation [under Track A] and Staff therefore recommends this matter be considered closed." Staff November 1, 2001 comments p. 9.

The Commission is aware, and the Facilitator noted, that the FCC has not determined a specific market share of residential service by competitors must exist in order to satisfy Track A. By the language of the Track A paragraph, it is enough if there is even one approved interconnection agreement by which Qwest "is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service...to residential and business subscribers." The Commission finds that the supplemental information filed in the record by Qwest establishes the presence of a provider providing service to residential and business customers in Idaho. The Commission accordingly finds that Qwest satisfies the Track A requirements.

SECTION 272: SEPARATE AFFILIATE REQUIREMENTS

Section 272 of the Telecommunications Act requires a BOC to provide interLATA services, once approved, through affiliate entities separate from the BOC. This section thus imposes significant structural safeguards to the BOC's provision of interLATA services. The Facilitator summarized the Section 272 requirements for Qwest as follows:

1. Qwest must provide in-region interLATA service through an affiliate that is separate from Qwest Corporation, the BOC;
2. The separate affiliate must maintain books, records and accounts in the manner prescribed by the FCC, which must be separate from books, records and accounts maintained by Qwest;
3. The separate affiliate must have separate officers, directors and employees from those of Qwest;
4. Transactions between the affiliate and Qwest must be conducted on an arms length basis with any such transaction reduced to writing and available for public inspection;
5. Qwest may not discriminate in favor of its affiliate in any dealings between the two entities;
6. Qwest must account for all transactions with its affiliate in accord with FCC accounting principals.

Qwest has designated Qwest Communications Corporation (QCC) as the Section 272 affiliate. QCC is wholly-owned by Qwest and is the entity through which Qwest provided interLATA services prior to its merger with U S WEST Communications.

In his report the Facilitator reviewed the evidence on each of the requirements contained in Section 272. The Facilitator identified significant problems in the requirements that Qwest maintain separate books and records for the affiliate. The Facilitator therefore recommended that Qwest be required to arrange for an independent review, covering the period from April to August of 2001, to determine:

- (a) whether there has been adequate action to assure the accurate, complete, and timely recording in its books and records of all appropriate accounting and billing information associated with Qwest/QCC transactions,
- (b) whether the relationship between Qwest as a vendor or supplier of goods and services and QCC has been managed in an arms-length manner, including, but not necessarily limited to a consideration of what would be expected under normal business standards for similar contracts with an unaffiliated third party, and
- (c) whether there are reasonable assurances that a continuation of the practices and procedures examined will continue to provide a level of

accuracy, completeness, timeliness and arms-length conduct found in examining the preceding two questions.

Facilitator's Report p. 14. Except for the booking of certain transactions identified by the Facilitator, the Facilitator concluded that Qwest has satisfied each of the separate affiliate requirements of Section 272.

In response to the Facilitator's recommendation, Qwest asked KPMG to provide the additional review and then filed KPMG's supplemental report on November 15, 2001. The KPMG report summarized the transactions it reviewed for the designated period to determine whether accounting for the transactions complied with Section 272 and associated FCC rules and regulations. KPMG noted several instances where Qwest did not comply with the FCC's affiliate transaction pricing rules, did not properly process accounting entries and affiliate billings, and did not reduce to writing certain services provided between Qwest and QCC. Except for the instances noted, KPMG concluded that Qwest had complied, in all material respects, with the Section 272 accounting requirements for the period from April 1, 2001 to August 31, 2001.

Along with the supplemental KPMG report, Qwest filed affidavits of accounting employees providing explanations for the discrepancies noted by KPMG, and asserting that corrective action had been or would be taken by Qwest. For example, the affidavit of Judith L. Brunsting states that Qwest corrected all of the identified discrepancies, and that QCC "has also implemented and is in the process of implementing several new internal controls intended to provide reasonable assurance that inter-company transactions initiated by the 272 affiliate are identified, reduced to writing, accurately processed and posted." Based on the KPMG report and representations by Qwest, Staff asked that Qwest perform a follow-up review by an independent third party to verify that the discrepancies identified in the report had been properly booked and that the corrective steps had actually been implemented. Qwest stated at oral argument its agreement to the additional review, Tr. p. 134-135, and subsequently filed a follow-up review by KPMG on December 19, 2001.

Staff in its written comments did not make a specific recommendation regarding Qwest's compliance with the Section 272 separate affiliate requirement. Staff concurred with the recommendation made by the Facilitator that the follow-up review be conducted by KPMG, and expressed some frustration in its written comments that Qwest had complicated the

Section 272 review by reorganizing and changing its designation of a separate affiliate. During the oral argument hearing, Staff indicated its belief that the bookkeeping issues would be resolved by the supplemental review to be conducted by KPMG. Staff also indicated, however, that it had requested additional information from Qwest and, after reviewing it, Staff would file supplemental comments on any remaining Section 272 issues. Tr. p. 136. Staff has not yet filed its supplemental comments. No other written comments were filed regarding the Section 272 separate affiliate requirements.

Based on this record and the Facilitator's report, the Commission conditionally finds that Qwest has put in place a separate affiliate to comply with the requirements of Section 272, but will reserve a final decision until Staff has filed its supplemental comments. The Commission will accept the supplemental comments to be filed by Staff, and will address any additional Section 272 issues in a subsequent decision. The Commission also notes that Section 272(d) requires Qwest to obtain an audit every two years to determine whether it is properly complying with Section 272 and FCC regulations for separate affiliate transactions. Qwest is required to file those audits with each state commission, and this Commission will continue to monitor Qwest's separate affiliate obligations.

PUBLIC INTEREST

In addition to the other requirements for approval of interLATA authority for Qwest, Section 271(d)(3)(C) precludes FCC authorization absent a determination that "the requested authorization is consistent with the public interest, convenience and necessity." Public interest issues, other than the QPAP, were the subject of the Facilitator's October 22, 2001 Report. Evidence on a number of issues were presented at the workshops, including the establishment of unbundled network element (UNE) prices, the level of competition that exists in Qwest's service territory, and prior conduct of Qwest as it relates to opening its markets to competition.

Written comments were filed on the public interest issues by AT&T, the Commission Staff and Touch America. In its comments, AT&T presented the same arguments it had presented to the Facilitator. Each of these issues has been properly addressed in the Facilitator's Report. In its comments, Staff addressed several issues, but was primarily concerned with the lack of UNE prices in Idaho. In its very brief comments, Touch America identified two areas concerning Qwest's performance as it relates to public interest. Touch America provided no discussion, but identified the following as its concerns:

1. Qwest wholesale billing practices and customer impacting service issues.
2. Qwest marketing and provisioning of interLATA services under the guise of lit capacity IRUs [indefeasible right of use] to customers in Idaho.

Touch America Comments p. 2. Touch America did subsequently provide to the Commission a copy of its complaint against Qwest filed at the FCC on these issues.

The primary argument addressed by the Facilitator regarding UNE prices was the relationship between the UNE prices and Qwest's retail rates. AT&T contended that, because Qwest's UNE rates exceed its retail rates, competitors cannot profitably enter the telecommunications market in Qwest's territory. Responding to AT&T's argument, the Facilitator quoted from the FCC's Order approving the application of SBC for interLATA authority in Kansas and Oklahoma. Regarding an upside down gap between UNE prices and retail rates, the FCC stated that "the Act requires that we review whether the [UNE] rates are cost-based, not whether a competitor can make a profit by entering the market." The Facilitator nonetheless was unable to determine whether Qwest's UNE prices are consistent with the public interest, stating that "whether or not Qwest UNE rates meet the checklist remains a question not resolved by these workshops." Facilitator's Report p. 6.

This Commission also is unable to determine whether Qwest's UNE prices are consistent with the public interest because Qwest has not established UNE prices for its Idaho services. The only UNE prices established for Qwest's Idaho services are found in an interconnection agreement resulting from a formal arbitration between AT&T and U S West. That agreement is dated July 27, 1998, and by its terms was effective for a three year period, although it also states that it "shall thereafter continue in force and effect unless and until a new agreement, addressing all of the terms of this Agreement, becomes effective between the parties." There is no evidence showing that Qwest's UNE prices reached through an arbitration that occurred four years ago satisfy current FCC TELRIC pricing requirements, that the arbitrated rates are currently effective because AT&T continues to purchase UNEs from the arbitrated prices, or that the UNEs identified in the interconnection agreement meet the complete list of UNEs now required for pricing.

The lack of UNE prices for Qwest remains a gap in Qwest's record for compliance with the Section 271 requirements. The Commission notes that a docket is underway in Idaho to

establish UNE prices for Qwest, Case No. QWE-T-01-11, but that case is currently not scheduled for completion. Until UNE prices are established for Qwest in Idaho, the Commission cannot conclude that Qwest has satisfied all of the FCC requirements for approval of Section 271 interLATA service authority.

CONCLUSION

The Commission adopts the September 21, 2001 report and October 22, 2001 report filed by the Facilitator. With regard to general terms and conditions, the Commission approves the resolution of disputes as proposed by the Facilitator, and approves two language changes recommended by AT&T. Qwest must revise its SGAT with the changes adopted or approved by the Commission. In addition, the Commission will review the change management process results Qwest will provide as part of the OSS test results.

The Commission finds Qwest has presented sufficient evidence to satisfy the Track A standard set forth in 47 USC 271(c)(1). Regarding the Section 272 separate affiliate requirements, the Commission will reserve its final decision until supplemental comments are filed by Staff. Finally, the Commission cannot find Qwest in compliance with public interest standards until UNE prices that satisfy the FCC's TELRIC standards are established.

This decision of the Commission is the last decision resulting from the workshops and reports filed by the Facilitator. Like his previous reports, the Facilitator's reports on general terms and conditions, Track A, Section 272 and public interest issues demonstrate careful and thorough analysis and discussion of the issues by all parties. The Commission appreciates the tremendous effort by the parties and the Facilitator to clarify difficult issues, present cogent arguments, and compile a detailed record for review by this Commission and the FCC.

The final draft report on the OSS test is scheduled to be filed with the participating state commissions later this month. Within 14 days of the draft report, the parties may file comments regarding the results of the test, and the Commission will include those comments in the record it will provide to the FCC.

DATED at Boise, Idaho this day of April 2002.

PAUL KJELLANDER, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

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EXHIBIT D

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF U S WEST)
COMMUNICATIONS, INC.'S MOTION FOR) CASE NO. USW-T-00-3
AN ALTERNATIVE PROCEDURE TO)
MANAGE ITS SECTION 271) COMMISSION FINAL DECISION
APPLICATION.) ON QWEST CORPORATION'S
) COMPLIANCE WITH SECTION 271
)**

This case commenced more than two years ago when U S WEST Communications, Inc., which became Qwest Corporation through a merger, filed a Notice of Intention to File a Section 271 Application and a Motion for Alternative Procedure to Manage the Section 271 Process. The Commission in response to Qwest's motion determined to join a multi-state collaborative process to establish a record on Qwest's efforts to satisfy the legal requirements for its entry into the interLATA market. Since then the Commission has issued a number of procedural orders and three decisions on the substantive issues, which collectively track the procedural history of the case, not restated here. The three substantive decisions required Qwest to respond by making changes to key components of its case, which Qwest provided in a filing on May 24, 2002, entitled Notice of Updated Statement of Generally Available Terms and Conditions [SGAT] and Request for Commission Acknowledgment that Rates are Effective on June 7, 2002.

Qwest also filed on May 31, 2002 an Affidavit of Jeffrey D. Owens essentially identifying the particular changes to its SGAT and averring that the changes were made to comply with the Commission's earlier decisions. Mr. Owens is a Senior Director in the Policy and Law Organization of Qwest Corporation, with responsibilities for managing aspects of Qwest's 271 efforts, including the filing of Qwest's SGAT in each of the fourteen states in which it provides local service. In his Affidavit, Mr. Owens states that the changes Qwest made to the Idaho SGAT fall within three categories:

- 1) Changes that were recommended or required by the Multi-State Facilitator or by this Commission;
- 2) Changes that resulted from consensus or other agreements or changes made at the request of CLECs in Idaho or other states, as well as

compliance language dictated by an order from the Federal Communications Commission or compliance language from other states that Qwest agreed to carry-forward to Idaho; and

- 3) Changes that resulted from the correction of typographical, grammatical, name change, capitalization, or other non-substantive matters, such as the deletion of redundant language or updates to web site addresses or technical standards.

Affidavit of Jeffrey D. Owens, p. 2 ¶ 4. The affidavit includes an extensive list of revisions that have been made to the SGAT to comply with Commission decisions.

BACKGROUND

Section 271 of the Telecommunications Act of 1996 (47 U.S.C. § 271) establishes the means for a Bell Operating Company (BOC), which includes Qwest, to begin providing in-region interLATA and interstate telecommunication services. The determination to authorize Qwest's entry into the interLATA market is made by the Federal Communications Commission (FCC), not this or any other state commission. 47 U.S.C. § 271(b). The three decisions already issued by the Commission address different parts of the Section 271 requirements: (1) Qwest's compliance with the 14-item checklist in Section 271 (the Checklist Decision) issued November 21, 2001; (2) Qwest's Performance Assurance Plan issued March 7, 2002 (the QPAP Decision); and (3) a decision on public interest, Track A, and Section 272 issued April 19, 2002 (the Public Interest Decision). Each decision identified issues that remained open and conditioned Commission approval on satisfactory resolution of those issues.

DISCUSSION

The Checklist Decision.

Section 271 contains a checklist of 14 items relating to access and interconnection a BOC must meet in each state where it provides local service. 47 U.S.C. § 271(c)(2)(B). The checklist identifies broadly stated requirements or categories for access and interconnection Qwest must provide to competitors desiring interconnection with its facilities. The Commission in the Checklist Decision stated it "is prepared, when consulted by the FCC, to report that Qwest satisfies the access and interconnection requirements of the competitive checklist in 47 U.S.C. § 271(c)(2)(B), so long as Qwest revises its SGAT as set forth in this decision and as may be necessary as this case proceeds to its conclusion." Checklist Decision p. 10. Qwest asserts in its

May 24, 2002 filing that it has responded to the issues identified by the Commission, including revisions to SGAT terms resulting from other state commission decisions.

The revised SGAT filed by Qwest on May 24 contains the revisions required by the Commission in its Checklist Decision. Included in the changes made by Qwest are those approved by the Commission in its Public Interest Decision, specifically to Section 5.12.2 of the SGAT relating to general terms and conditions of the SGAT. Because Qwest made the changes directed by the Commission, and the SGAT provides comprehensive terms for access and interconnection consistent with the checklist requirements, the Commission is prepared, when consulted by the FCC, to report the record establishes that Qwest satisfies the access and interconnection requirements of 47 U.S.C. § 271(c)(2)(B).

The QPAP Decision.

Part of the FCC's review of a Section 271 application is to determine that granting interLATA authority to the BOC "is consistent with the public interest, convenience and necessity." 47 U.S.C. § 271 (d)(3)(C). To insure the applicant will continue to meet the access and interconnection requirements after approval is granted, the FCC has determined the public interest standard may require a BOC to have a performance assurance plan (Plan or QPAP) in place. The QPAP provides specific standards for Qwest's delivery of services to competitor telecommunications companies (CLECs) and automatic penalties if the standards are not met.

In its QPAP Decision, the Commission expressed support for Qwest's Plan but was "not yet prepared to recommend approval of the QPAP, however, because changes must still be made." The QPAP Decision directed some specific changes. In addition, the Commission expected that completion of Qwest's operation support system (OSS) testing might result in changes to QPAP measurements, and the Commission anticipated that changes might be prudent based on changes made by other state commissions. QPAP Decision pp. 9-10. Qwest in its May 24 filing asserts that it has made the changes directed or anticipated by the Commission and that its filing complies with Commission instructions.

Staff reviewed the revised QPAP and believes it is consistent with the Commission's directives in its QPAP Decision. One change to the QPAP Staff believed might be appropriate in the interest of uniformity with other state commission decisions relates to the triggering of Tier 2 penalty payments. The relevant terms approved by the Commission were those recommended by the Facilitator in his QPAP Report. Qwest's original QPAP called for payment of Tier 2

penalties only if three consecutive months of performance measures are missed by Qwest. The Facilitator recommended changes that provide for Tier 2 payments if Qwest misses the performance measures in two out of three consecutive months and subsequently misses the measures again in the calendar year. In monitoring the decisions of other state commissions, Staff noted that some commissions appeared to be requiring Tier 2 payments for each month that the performance measures are missed. According to Staff, Qwest asserts that it has not made that change to its QPAP in any other state, but has committed to providing the change to the Idaho QPAP “in the event that Qwest agrees to remove the phase-in of Tier 2 payments for the QPAP in any state that participated in the ROC multi-state QPAP process.”

Another change to the QPAP worth noting results from the Commission’s instructions for Section 16.1 of the QPAP describing the 6-month review and future changes to the QPAP. In its QPAP Decision, the Commission stated “that the QPAP should leave open the possibility that the Commission may broaden the review if necessary to respond to circumstances arising from actual experience with the QPAP.” QPAP Decision p. 8. The Commission also noted that Section 16.1 stated that changes could not be made to the QPAP without Qwest’s agreement. The Commission required that the language be modified “to state that Qwest will make changes if the Commission so directs, whether Qwest agrees or not with the changes.” QPAP Decision pp. 8-9.

In response to the Commission’s instructions, the revised QPAP provides that Qwest, a CLEC, or the Commission every six months “may initiate a review of the performance measurements to determine whether measurements should be added, deleted, or modified; whether the applicable benchmark standards should be modified or replaced by parity standards; and whether to move a classification of a measurement to high, medium, or low, Tier 1 or Tier 2.” The QPAP also now limits Qwest’s potential liability for changes to the QPAP it does not agree with “to 10% of the monthly payments that Qwest would have made absent the effect of such changes as a whole.” That 10% payment collar is in effect for 12 months following the change. For changes to performance measures that have not been submitted to the ROC PID administration process, however, a CLEC may request that the 10% collar be lifted after only six months of payments where the CLEC has received 80% or less of what the total payments would have been without the collar.

The Commission stated in its QPAP Decision that “the QPAP is well on its way to meeting the FCC’s zone of reasonableness standard,” the review standard used by the Commission in the QPAP Decision. Qwest responded to the Commission’s instructions to make changes to the QPAP, as identified in the revised QPAP filed on May 24. The Commission believes the QPAP now adequately satisfies the FCC’s zone of reasonableness standard of review.

The Public Interest Decision.

Although the QPAP is properly part of the FCC’s public interest inquiry, the Commission issued a separate Public Interest Decision, in addition to the QPAP Decision, to better address the variety of issues comprising the public interest standard. The Public Interest Decision contains several reservations to Commission approval. In that decision the Commission stated it (1) would review the change management process Qwest was to provide with the OSS test results, (2) would reserve its final decision on the Section 272 separate affiliate requirements until Staff filed supplemental comments, and (3) could not find Qwest in compliance with public interest standards until unbundled network elements (UNE) prices that satisfy the FCC’s TELRIC standards are established.

1. OSS Testing Results and Change Management Process.

The Commission acknowledges receipt of the final report of KPMG Consulting and HP Consulting covering the third-party test of Qwest’s Operational Support System (OSS), including the change management process. Staff reported it believes the testing process was comprehensive, thorough and fair. The testing identified numerous concerns and issues resulting in a number of improvements to Qwest’s systems. The final report concludes that Qwest’s systems provide a competitor with the basic tools and services it needs to function and that these are provided in a manner that affords competitors a reasonable chance to compete.

The final report also indicates that a number of issues remained unresolved at the conclusion of the test. The Commission expects that Qwest will continue its efforts to address these issues. Should the FCC approve Qwest’s application for interLATA authority, the Commission will continue monitoring and observing Qwest’s actual wholesale service performance. The Commission finds that the draft and final reports show that Qwest is providing CLECs with non-discriminatory access to OSS and that it is likely to serve CLECs in a manner consistent with the requirements of Section 271.

2. Section 272 Separate Affiliate Requirements.

Once a BOC receives authorization to provide interLATA services, Section 272 of the Telecommunications Act requires that those services be provided through affiliate entities separate from the BOC. In its Public Interest Decision, the Commission stated regarding Qwest's compliance with the Section 272 requirements that "the Commission conditionally finds that Qwest has put in place a separate affiliate to comply with the requirements of Section 272, but will reserve a final decision until Staff has filed its supplemental comments." Public Interest Decision p. 10. Staff did not file supplemental comments, and its concerns about Section 272 compliance relate to continued monitoring of Qwest's separate affiliation transactions. Staff recommended the Commission accept the record on the Section 272 requirements, but review Qwest's continued compliance in future audits, including one to occur six months after Qwest receives FCC approval for interLATA service.

The only condition the Commission placed on its conclusion that "Qwest has put in place a separate affiliate to comply with the requirements of Section 272" was the filing of supplemental comments by Staff. That condition has been removed by Staff's recommendation that the Commission continue to monitor Qwest's separate affiliation transactions, which the Commission will do through already planned audits.

3. UNE Prices and TELRIC Standards.

In its Public Interest Decision, the Commission stated "the Commission cannot find Qwest in compliance with public interest standards until UNE prices that satisfy the FCC's TELRIC standards are established." Public Interest Decision p. 12. In its May 24 filing Qwest asked the Commission to approve revised UNE prices contained in the filing effective June 7, 2002, pending resolution of the UNE cost docket. According to Qwest's filing, the Company "intends that these new, lower rates remain in effect for its CLEC customers until one of the following occurs: the Idaho Public Utilities Commission establishes a different rate in a cost docket; a mutually acceptable different rate is negotiated between Qwest and its customers; or a change to applicable law takes place triggering a rate change pursuant to any 'change in law' provision of an applicable interconnection agreement." Qwest Notice of Updated SGAT p. 7. Qwest asserts that its updated SGAT "provides substantial reductions in key UNE prices that would not otherwise be reduced until completion of the cost docket."

AT&T in a letter sent to the Commission complained about Qwest's revised UNE prices, claiming Qwest's representation that the new rates will not increase rates to CLEC customers is incorrect. AT&T acknowledges Qwest made voluntary reductions to a "limited" number of rate elements, but believes some of the new rates could actually increase costs, and thus AT&T "objects to any attempt by Qwest to unilaterally increase rates currently set forth in the interconnection agreements between AT&T and Qwest." AT&T also agrees the "reductions offered by Qwest adjust the rates closer to being TELRIC compliant."

There are several responses to the concerns raised by AT&T. First, in a letter AT&T received from Qwest, which was included in AT&T's letter to the Commission, Qwest states it will charge CLECs the lowest rates, whether in the revised filing or in existing interconnection agreements. That commitment, which the Commission expects Qwest to honor, should ensure no CLEC's costs increase as a result of the revised UNE rates. Second, AT&T is a party in the Commission's on-going UNE price case and should raise its concerns in that docket. Appropriate UNE rates will be established by the Commission after considering the evidence offered by all parties, including AT&T. Finally, the revised UNE rates are part of Qwest's SGAT, which is "a statement of the terms and conditions that [a BOC] generally offers within that State to comply with the [interconnection] requirements of section 251 and the regulations thereunder." 47 U.S.C. § 252(f)(1). When such statements are filed with a state commission, the commission may permit the statement to take effect, which "shall not preclude the State commission from continuing to review" the statement. 47 U.S.C. § 252(f)(3) and (4). The Commission will review the appropriateness of the UNE prices in the UNE cost case, and will require the rates approved in that case to be included in Qwest's SGAT.

In short, the Commission believes the revised UNE prices are reasonable, pending resolution of the cost case, and the Commission will permit them to be effective as of June 10, 2002. The prices contained in the compliance filing provide reductions in key UNE prices that would not otherwise occur until completion of the cost docket. Revised prices for two important elements—unbundled loops and local switching—are based on TELRIC prices established by the Colorado Commission. For the local loop price, Qwest represents that it adjusted the price established in the Colorado case to reflect Idaho specific data, as determined by the FCC's Cost Synthesis Cost Model. In the words of AT&T, the resulting price adjustments "are closer to being TELRIC compliant."

Motion Filed by Touch America, Inc.

The Commission also received on June 4, 2002, a motion filed by Touch America, Inc., asking for an order “staying these proceedings pending resolution of Touch America’s complaints before the FCC that raise critical questions concerning Qwest’s current and potential future compliance with [Section 271] requirements.” As an alternative, Touch America “requests that the Commission condition its recommendation regarding Qwest’s 271 application on the FCC’s determination regarding the Touch America complaints.” Touch America has filed complaints with the FCC alleging, among other things, that Qwest’s provision of lit fiber on an exclusive basis to certain customers, called indefeasible right of use (IRU), violates the interLATA service prohibition of Section 271.

The timing of Touch America’s motion and the nature of the issues identified are cause for the Commission to deny the motion. Touch America provides no indication that its complaints about Qwest’s conduct have anything to do with Idaho customers or this Commission’s intrastate jurisdiction. Touch America has apparently filed its complaints in the proper forum—the FCC—where they will be decided. The motion itself demonstrates the inappropriateness of the motion before this Commission. For example, Touch America states “it would be illogical for the FCC to approve a Qwest 271 application at this time,” based on the complaints filed by Touch America. The Company states it has, “in a complaint action filed before the FCC, detailed the many reasons why the lit fiber IRUs violate Section 271.” Touch America Motion p. 10. Touch America contends this Commission, if the FCC determines lit fiber IRUs are akin to UNEs, “should determine that it has a duty under Section 271(c)(2)(B)(ii) of the Act to ensure that Qwest offers nondiscriminatory access to and pricing for the lit fiber IRUs in accordance with Sections 251(c)(3) and 252 (d)(1) of the Act.” Touch America Motion pp. 11-12.

Touch America apparently has raised serious issues in its complaints filed with the FCC and the Commission is confident the FCC will give them serious consideration. As it is for the FCC to determine whether Qwest will be granted interLATA service authority, it is for the FCC to determine the validity of Touch America’s complaints and their effect, if any, on Qwest’s FCC application for interLATA authority. The Commission denies Touch America’s motion for an order staying this proceeding.

CONCLUSION

Qwest, numerous intervenors, Staff and the Facilitator have participated in a lengthy process, involving many complex issues and significant detail, and numerous multi-state collaborative workshops. This process has taken the better part of two years and an incredible amount of effort and resources. The result is a thorough review of the 14-item checklist, Qwest's Performance Assurance Plan, a quality OSS final product along with an adequate review of the public interest and Track A items as required by 47 U.S.C. § 271.

Upon review of the May 24 filing, including the Affidavit of Mr. Owens, the Commission believes Qwest has responded to the directives the Commission stated in its three previous decisions, and has made the necessary changes to its SGAT or otherwise addressed the conditions put forth by the Commission. The Commission accepts the May 24, 2002 SGAT as the Company's final SGAT filing, subject to any further review necessitated by completion of the UNE cost case.

With the revised SGAT filing, the Commission is prepared, when consulted by the FCC, to advise that the record establishes in this proceeding that Qwest has adequately addressed the Section 271 requirements. Through the planned reviews and other appropriate means, the Commission will continue to monitor Qwest's performance in the future to prevent backsliding and to ensure that the doors to competition remain open.

DATED at Boise, Idaho this day of June 2002.

PAUL KJELLANDER, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

In the Matter of the Petition of AT&T Communications)
of the Mountain States for an Investigation into) Case No. USW-T-00-3
U S WEST Communications, Inc.'s Compliance with)
Section 271 of the Telecommunications Act of 1996)

**AT&T'S COMMENTS ON THE ROC OSS FINAL REPORT AND REQUEST
FOR RECONSIDERATION OF THE COMMISSION'S
JUNE 10, 2002 ORDER**

AT&T Communications of the Mountain States, Inc. ("AT&T") respectfully
submits these Comments on the ROC OSS Final Report. Although the Idaho Utilities and
Transportation Commission (the "Commission") issued an order on June 10, 2002 indicating it is
prepared to advise the FCC that "Qwest has adequately addressed Section 271 requirements,"³
AT&T makes this filing because the record on which the Commission entered that Order is
incomplete. Specifically, the Commission stated that the "draft and final reports [of the ROC
OSS Test] show that Qwest is providing [competitive local exchange carriers] CLECs with
nondiscriminatory access to OSS and that it is likely to serve CLECs in a manner consistent with

³ See *Commission Final Decision On Qwest Corporation's Compliance With Section 271*, Case No. USW-T-00-3, (June 10, 2002) at 9.

the requirements of Section 271.”⁴ This conclusion was made without affording CLECs an opportunity to comment on the final ROC OSS report.⁵ Other states, such as Washington,⁶ have allowed for comments and even conducted workshops or hearings on the ROC OSS. Moreover, the Consumer Advocate Staff of the Wyoming Public Service Commission recently issued comments (dated July 7, 2002) concluding that the ROC OSS was incomplete and that “Qwest should be denied 271 authority until such time as it successfully demonstrates satisfactory completion of the testing requirements.”⁷

Thus, although the Commission and its Staff have evaluated the Final Report, the Commission’s conclusions, without having received comments or evidence from other interested parties, are not based on a full and complete record. AT&T respectfully requests that the Commission reconsider its June 10, 2002 Order in light of the issues AT&T raises herein.

I. INTRODUCTION

The Regional Oversight Committee’s test of Qwest’s operational support systems (“OSS”) has identified many significant deficiencies in the OSS access that Qwest provides to CLECs. The more significant deficiencies include:

- 1) Qwest order processing personnel making an excessive rate of human errors in the processing of CLEC orders,
- 2) inaccurate Qwest reported performance data as evidenced by KPMG Consulting’s inability to independently reproduce Qwest’s performance data,
- 3) discriminatory treatment in the provisioning of jeopardy notice,
- 4) insufficient capability to provision dark fiber,
- 5) insufficient capability to provision enhanced extended links (“EEL”s),

⁴ *Id.* at 5.

⁵ There are other issues in the June 10 Order on which interested parties were not provided with an opportunity to comment, such as whether Qwest’s most recent SGAT filing and Performance Assurance Plan comply with previous Commission Orders. AT&T reserves its right to comment on these issues.

⁶ The Washington Utilities and Transportation Commission conducted hearings on the OSS ROC Test on June 5-7, 2002.

⁷ See *Consumer Advocate Staff Comments Regarding the ROC OSS Final Report*, filed in DKT NO. 70000-TA-00-599, Rcd. No.5924, dated June 7, 2002 at 7 (attached hereto as Appendix A).

- 6) longer intervals for the provisioning of UNE-P services that do not require the dispatch of a Qwest technician than for similarly situated retail customers,
- 7) longer provisioning intervals for business resale services that do not require the dispatch of a Qwest technician than for similarly situated retail customers,
- 8) inaccurate disposition codes for CLEC trouble reports, and
- 9) inadequate and unstable processes for the production of DUF records.

AT&T will describe each of these deficiencies in more detail in the comments that follow.

II. SPECIFIC TEST FINDINGS

A. Pre-Ordering, Ordering and Provisioning

The OSS test has demonstrated that Qwest has serious problems in its manual handling of CLEC orders. Qwest manually handles orders when the CLEC submits orders:

- Via manual methods (i.e. Facsimile);
- Via an electronic interface and the characteristics of the orders require manual processing; and
- That contain errors.

1. The Rate of Human Errors is Excessive

a. The Number of CLEC Orders That Qwest Manually Handles and the Percentage of the Total Number of CLEC Orders is Both High

A high percentage of a CLEC' orders is manually handled by Qwest in a given month. This high percentage of manually handled orders also translates into large quantities of manually handled orders. The below chart shows the percentage of CLEC orders manually handled by Qwest as compared to the total number of orders submitted by the CLEC and the total number of manually handled orders for four key services:

April 2002 Results	Resale	Unbundled Loops	Local Number Portability	UNE-P	Aggregate
% of CLEC Orders	26.3%	43.9%	60.0%	45.2%	37.2%

Manually Handled by Qwest ⁸					
Total Number of CLEC Orders Manually Handled by Qwest ⁹	379 ¹⁰	157	11		547

In addition to the valid orders that are manually processed by Qwest personnel, in April of 2002, Qwest also manually processed 151 rejected Idaho CLEC orders.¹¹ Qwest personnel touch and manually handle nearly 2,500 orders for Idaho CLECs in a month. With that amount of manual processing, it is critical that Qwest order processing personnel know how to properly treat those orders.

b. KPMG Consulting Found That Qwest Representatives That Manually Handle CLEC Orders Create Far Too Many Human Errors in CLEC Orders.

KPMG Consulting found that Qwest personnel did not know how to properly treat CLEC orders and that there were excessive amounts of human errors being made by Qwest personnel as they processed CLEC orders. These human errors affected the due dates that Qwest provided the pseudo-CLEC and in some cases resulted in the pseudo-CLEC order being given a due date longer than it should have received. The errors also affected Qwest's performance results. The errors caused orders to be excluded from the performance results calculation that should not have been and orders to be included that should not have been. The human errors also resulted in inaccurate calculation of provisioning intervals.

⁸ Qwest Performance Results, Checklist Format, Idaho, May 2001 – April 2002, May 16, 2002, ("Idaho PID Results") PIDs PO-2A-1 and PO-2A-2, pp. 50 – 53.

⁹ *Id.* PIDs PO-5B-1(a), PO-5B-2(a), PO-5B-1(b), PO-5B-2(b), PO-5B-1(c), PO-5B-2(c), PO-5C(a), PO-5C(b), and PO-5C(c).

¹⁰ Results combined for resale and UNE-P.

¹¹ *Id.* PIDs PO-3A-1, PO-3B-1, and PO-3C pp. 54 - 55.

KPMG Consulting discovered this problem through the submission of pseudo-CLEC transactions and calls to the CLEC help desk as part of the pre-ordering, ordering and provisioning tests. When either KPMG Consulting or Hewlett-Packard received an unexpected response from a pseudo-CLEC transaction or a call to the CLEC help desk, an observation or exception identifying the unexpected response was created. KPMG Consulting noticed that in many of Qwest's responses to observations and exceptions created by KPMG Consulting and Hewlett-Packard that Qwest was attributing the cause of the problem to human error and that additional training of the personnel that made the errors would remedy the problem. After seeing far too many Qwest responses to problems that attributed the problem to human error and prescribing additional training as the remedy, KPMG Consulting stated that, "KPMG Consulting has identified a pattern in Qwest's Observation and Exception responses that refer to the need for additional training and/or training enhancements."¹² As background to that finding KPMG Consulting stated:

Qwest's responses to 75 Observations and Exceptions, raised by both KPMG Consulting and Hewlett-Packard Consulting (HPC), state that training initiatives and/or enhancements have been undertaken to remedy the issues raised. Of these 75 responses, 49 describe additional training measures that directly impact Interconnect Service Center (ISC) and Service Delivery Coordinator (SDC) personnel.¹³

KPMG Consulting described the human error issue as follows:

As recently as January 2002, KPMG Consulting and HPC have identified issues in the POP Feature/Function Evaluation to which Qwest has responded by stating it would perform corrective actions in the form of additional training for the ISC and SDC to remedy the reported problems. However, as issues raised in "new" Observations and Exceptions continue to point to additional training needs for the SDC and ISC, KPMG Consulting believes that the adequacy of Qwest's ISC and SDC training programs may be insufficient.¹⁴

¹² Observation 3086, January 29, 2002.

¹³ *Id.*

¹⁴ *Id.*

In response to Observation 3086, Qwest stated that it was: 1) making system improvements to reduce the possibility of human errors, (2) improving its documentation, and (3) was reemphasizing the quality control initiatives already in place.

c. **KPMG Consulting Used the Wrong Approach in Deciding to Close Observation 3086.**

KPMG Consulting observed the problem of excessive human error as a direct result of transaction testing and calls to Qwest's help desk. When Qwest personnel were manually handling pseudo-CLEC orders and responding to pseudo-CLEC calls to the Qwest's help desk they found that Qwest personnel were making far too many mistakes. In verifying that Qwest's purported improvements had indeed reduced the rate of human error to acceptable levels, the obvious path would have been additional transactions designed to be manually handled and additional calls to Qwest's help desk.

Instead of taking the obvious approach of additional transaction testing and additional calls to the Qwest help desk, KPMG Consulting took the expeditious and artificial approach of reviewing Qwest documentation, interviewing Qwest employees and observing Qwest employees at the order processing centers and CLEC help desk. The Qwest documentation describes what **should** occur at the Interconnect Service Center and Qwest help desk. As was evident by the excessive amount of human error, what **should** be happening to CLEC orders and requests for assistance was, in fact, not happening. KPMG Consulting's approach of interviewing Qwest employees and observing Qwest employees at the Interconnect Service Center and CLEC help desk is quite artificial. KPMG Consulting's interviews and observations virtually ensured that the employees interviewed and observed would be on their best behavior. When an Interconnect Service Center representative or help desk representative is confronted

with some stranger looking over their shoulder as they do their work, that representative is sure to be very cognizant of doing everything they should be doing.

Given the unrealistic and artificial approach that KPMG Consulting chose to verify that the rate of human errors had reached acceptable levels and that no additional transactions or calls to the help desk were employed in the verification, it is not surprising that KPMG Consulting reached the following conclusion:

KPMG Consulting has conducted interviews with Qwest training staff and ISC managers, on-site observations at several ISC locations, and reviewed supporting documentation to verify the training and quality assurance procedures described by Qwest are in place and are followed. KPMG Consulting finds that these procedures sufficiently address the concerns raised in this observation.¹⁵

d. Observation 3110 Showed That The Rate of Human Errors Made By Qwest Order Processing Personnel Had Not Been Reduced to Acceptable Levels.

During the retest associated with Exception 3120 there were nine LSRs for UNE-P and resale services that were manually processed by Qwest personnel. Out of those nine LSRs, Qwest personnel made human errors on two of them (22.2%).¹⁶ There were also eighteen line sharing orders that were manually handled by Qwest personnel. Out of those eighteen orders there were at least three errors made on the orders (16.67%).¹⁷

As a result of the excessive rate of human errors on a limited set of Exception 3120 retest orders, KPMG Consulting reviewed historical results for orders that Qwest manually handled since its purported improvements designed to greatly reduce the rate of human error in Qwest's processing of orders. Of the forty-nine orders manually processed by Qwest, KPMG Consulting found Qwest had made human errors on seven of them (14.3%). In total, KPMG Consulting examined seventy-six pseudo-CLEC orders that were manually handled by Qwest personnel as

¹⁵ Observation 3086, KPMG Consulting Second Supplemental Response, April 12, 2002.

¹⁶ Observation 3110, May 23, 2002.

¹⁷ *Id.*

part of the Exception 3120 retest and historical data and found twelve instances of human error (15.8%). KPMG Consulting's determination that 15.8% of the manually handled pseudo-CLEC orders had human errors is ample and sufficient evidence to show that Qwest had, in fact, not remedied the excessive rate of human errors that was the subject of Observation 3086.

Surprisingly, KPMG Consulting describes its examination of seventy-six CLEC orders and a finding of twelve orders with human errors as a "limited review."¹⁸ KPMG Consulting has made a determination of "Satisfied" for OSS test evaluation criteria involved with manually processed orders with sample sizes smaller than seventy-six.¹⁹ If less than seventy-six samples were not considered a "limited review" and allowed KPMG Consulting to assign a "Satisfied" result to evaluation criteria related to the manual processing of order, then seventy-six samples should have been enough for KPMG Consulting to assign a result of "Not Satisfied" to the relevant evaluation criteria.²⁰

It was reassuring that KPMG Consulting finally realized "that the only way to properly address this observation [excessive levels of human error] is to conduct a retest that focuses on orders that drop out for manual handling."²¹ Unfortunately, KPMG Consulting did not realize this when it decided to close Observation 3086 based upon interviews and observations rather than retest transactions that were manually processed.

In light of KPMG Consulting's timorous conclusion that seventy-six samples was a "limited review" that warranted a "Unable to Determine" rather than a "Not Satisfied" result for the relevant evaluation criteria, it appears Qwest decided to cut its losses and take the "Unable to

¹⁸ Observation 3110, KPMG Consulting Second Response, May 28, 2002.

¹⁹ See e.g., Evaluation Criteria 12-6-2 (75 samples), 12-6-5 (38 samples), 12-7-7 (47 samples), and 12-8-1 (23 samples).

²⁰ KPMG Consulting stated that the Evaluation Criteria 12.8-2, 12-11-4 and 14-1-44 were associated with Observation 3110.

²¹ Observation 3110, KPMG Consulting Second Response, May 28, 2002

Determine” result rather than risk further exposure of its continuing problems with excessive rates of human error and a “Not Satisfied” result. Consequently, Qwest refused KPMG Consulting’s suggestion of further retesting.

Because of the disturbing level of human errors discovered by KPMG Consulting during the retest of Exception 3120 and its review of historical test data, KPMG Consulting assigned a result of “Unable to Determine” to the evaluation criterion “Procedures for processing electronically submitted non-flow through orders are defined, documented, and followed.”²² With the very high volumes of CLEC orders that are manually processed by Qwest, a failure by Qwest to achieve a “Satisfied” result for the processing of non-flow through orders is significant enough to justify a finding of non-compliance with checklist item 2.

e. **Qwest’s Excessive Rate of Human Errors Demonstrates That Its Performance Results Data Are Inaccurate and Unreliable.**

KPMG Consulting found that Qwest’s excessive rate of human error in Qwest’s manual processing of CLEC orders also affected the accuracy and reliability of Qwest’s reported performance results data. Specifically, Qwest representatives were assigning incorrect application date to orders.²³ The application date is essentially the point at which Qwest “starts the clock” for the provisioning of orders. Qwest uses the application date and time as the basis for its assignment of due dates and its calculation of provisioning intervals. The application date and time directly impacts the OP-3 Commitments Met, OP-4 Installation Interval, and OP-6 Delayed Days PIDs. It impacts the OP-3 measurement in the assignment of due dates. Qwest assigns due dates based upon the application date and time. If Qwest representatives determine the application date and time in error, it could result in Qwest assigning longer due dates than

²² *Qwest Communications OSS Evaluation, Final Report* (“Final Report”), Version 2.0, May 28, 2002, p. 145, Evaluation Criterion 12.8-2.

²³ Observation 3110, KPMG Consulting Second Supplemental Response, May, 28, 2002.

should have been assigned. The application date and time impacts the OP-4 and OP-6 measurements in how Qwest calculates the interval from application date to completion date.

The FCC has stated that, “the reliability of reported data is critical, and that properly validated metrics must be meaningful, accurate, and reproducible.”²⁴ The FCC has also stated, “the credibility of the performance data should be above suspicion.”²⁵ Qwest produces CLEC-specific reports for the relevant PID results. As part of the ROC OSS test, Qwest produced performance data for the Pseudo-CLEC transactions. During the ROC OSS test, HP also collected and KPMG analyzed Pseudo-CLEC data for activities performed during the test. KPMG took the raw, input data from HP and compared that to the same raw, input data provided by Qwest.

The developers of the Master Test Plan (“MTP”) recognized that KPMG’s independent calculation of PID-compliant performance results provided an opportunity to check the accuracy of Qwest’s raw, input data as well as to confirm that Qwest continues to convert the raw, input data into PID-compliant performance results. This check can be done by simply comparing KPMG’s data for the Pseudo-CLEC to the Qwest data for the Pseudo-CLEC.

One of the MTP-required outputs that KPMG must produce is a “KPMG Consulting-produced, HP data to Qwest-HP data comparison.”²⁶ This comparison report should have provided further evidence as to the accuracy and reliability of Qwest’s raw, input data and whether or not Qwest continues to turn that data into PID-compliant performance results. Unfortunately, KPMG Consulting failed to produce this report. Instead, KPMG Consulting

²⁴ Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, CC Docket No. CC 00-65, Memorandum Opinion and Order, FCC 00-238, released June 30, 2000 (“Texas Order”), ¶ 428 (note omitted).

²⁵ *Id.*, ¶ 429.

²⁶ The Regional Oversight Committee (ROC) 3rd Party Test, Qwest OSS Evaluation Project Master Test Plan, Revised Release 5.2, April 9, 2002, Sections 12.6.3 and 14.6.3.

provided an assessment of the consistency between KPMG Consulting’s pseudo-CLEC data and Qwest’s pseudo-CLEC data. The results of the assessment were shown in the test evaluation criteria 12-11-4²⁷ and 14-1-44²⁸. The test evaluation criterion 12-11-4 is, “Qwest-produced measures of Pre-Order/Order performance results for HPC transactions are consistent with KPMG Consulting-produced HPC measures” and for 14-1-44 it is, “Qwest-produced measures of ordering and provisioning (OP) performance results for HPC transactions are consistent with KPMG Consulting-produced HPC measures.” KPMG Consulting investigated any deviation between the KPMG- and Qwest-produced performance results to determine if the deviation is the result of inaccurate or unreliable Qwest data.

KPMG Consulting completed its comparison of the pseudo-CLEC data that it collected with the pseudo-CLEC data that Qwest collected. KPMG Consulting’s comparative analysis identified several problems that required remedial action by Qwest.²⁹ This remedial action included Qwest’s recalculation of previously submitted performance data. While Qwest corrected most of the problems identified by KPMG Consulting to the satisfaction of KPMG Consulting, a significant problem that remains open is the excessive rate of human error being introduced into orders processed by Qwest representatives.³⁰ KPMG Consulting’s analysis of retest data for Exception 3120 as well as other historical retest data caused such concern to KPMG Consulting that it could not find that Qwest had satisfied the test evaluation criteria 12-11-4 and 14-1-44. Qwest’s failure to earn a “Satisfied” result for the data accuracy and reliability test criteria call into question the accuracy of Qwest’s reported results. Until Qwest has demonstrated to the satisfaction of KPMG Consulting that its performance measurement

²⁷ Final Report, p. 98.

²⁸ Final Report, p. 201.

²⁹ See Observations 3089, 3099 and 3110 and Exception 3120.

³⁰ Observation 3110.

results for manually processed orders are accurate and reliable, this Commission should not rely upon Qwest's reported performance results for performance measurements OP-3, OP-4 and OP-

6.

2. KPMG Consulting Determined the Qwest's Provision of Jeopardy Notices to CLECs Is Discriminatory.

a. The FCC's Standard.

The FCC considers the ability to provide timely jeopardy notices a critical part of a BOC's OSS. The FCC described jeopardy notices and the criticality of them as follows:

After a competing carrier has received a FOC notice with a committed due date for the installation of a customer's service, it is critical that the BOC provide the competing carrier with timely notice if the BOC, for any reason, can no longer meet that due date. These notices are called order jeopardy notices. The failure to meet scheduled due dates is likely to have a significant competitive impact on new entrants' ability to compete, regardless of whether the delay is actually caused by the BOC. To the extent that the BOC does not provide timely order jeopardy notices to the competing carrier, the impact of missed due dates will be compounded by the inability of the competing carrier proactively to inform its customer and reschedule the time for service installation.³¹

The FCC further emphasized the importance of jeopardy notices when it stated:

When [a BOC] cannot meet a committed due date, it is critical that the competing carrier be informed in a timely manner so that it can contact its customer in order to schedule another due date.³²

The FCC established the BOC's standard for the provisioning of jeopardy notices as providing jeopardy notice information in substantially the same time and manner as it provides for its retail operations.³³

³¹ *Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Services in South Carolina*, CC Docket No. 97-208, Memorandum Op. and Order (released December 24, 1997) at ¶ 130 (hereafter "*BellSouth South Carolina Order*").

³² *Id.*, ¶ 131.

³³ BANY Order, ¶ 185.

b. KPMG Consulting Assigned a Result of “Not Satisfied” to the Evaluation Criterion, “Qwest systems or representatives provide timely Jeopardy notices for Resale products and services.”

In the Final Report KPMG Consulting determined that Qwest had not satisfied the evaluation criterion, “Qwest systems or representatives provide timely Jeopardy notices for Resale products and services.”³⁴ The PO-9 Timely Jeopardy Notice measurement was the relevant measurement for this evaluation criterion. The PO-9 measurement tracks the percent of time that Qwest provides a jeopardy notice when it misses a committed due date. Qwest’s failure, as determined by KPMG Consulting, to provide jeopardy notices for resale products and services in substantially the same time and manner as for retail customers is further evidence that Qwest has failed to meet its obligations for checklist item 2.

c. KPMG Consulting Assigned a Result of “Not Satisfied” to the Evaluation Criterion, “Qwest systems or representatives provide timely Jeopardy notices for UNE-P.”

As with the evaluation criterion 12-9-4, in the Final Report KPMG Consulting assigned a “Not Satisfied” result to this evaluation criterion.³⁵ Qwest’s failure, as determined by KPMG Consulting, to provide Jeopardy notices for resale products and services in substantially the same time and manner as for retail customers is further evidence that Qwest has failed to meet its obligations for checklist item 2.

3. KPMG Consulting’s Results Demonstrate That Qwest is Not Capable of Providing Unbundled Dark Fiber to CLECs.

KPMG Consulting found the evaluation criterion “Qwest provisions Unbundled Dark Fiber by adhering to documented method and procedure tasks” was not satisfied.³⁶ This was a test to determine if Qwest technicians follow Qwest methods and procedures when installing

³⁴ Final Report, p. 92, Evaluation Criterion 12-9-4.

³⁵ *Id.*, Evaluation Criterion 12-9-5.

³⁶ Final Report, p. 186, Evaluation Criterion 14-1-10.

dark fiber. Unbundled dark fiber is a complex service where testing cannot be accomplished in a test environment without access to actual network facilities. Because of the complexity and test environment limitations, the ROC OSS TAG agreed that Qwest's ability to provision unbundled dark fiber would be tested through KPMG Consulting's review of Qwest installing unbundled dark fiber for commercial CLECs. KPMG Consulting was tasked with determining the extent of Qwest technician adherence to Qwest's documented methods and procedures. This type of testing during the ROC OSS test was commonly called a "process evaluation."

Commercial usage of dark fiber in Idaho has been non-existent. Over the last twelve months, there were no dark fiber unbundled loops installed by Qwest in Idaho.³⁷ Over the last eight months, there were no dark fiber interoffice facility orders installed in Idaho.³⁸ Since there is no commercial data for Qwest to rely upon to demonstrate it can provide unbundled dark fiber to CLECs, the ROC OSS test was designed to determine if Qwest had the capability of providing dark fiber to CLECs.

The ROC OSS test found that Qwest was not capable of providing unbundled dark fiber to CLECs. In its initial test of the ability of Qwest technicians to follow Qwest's documented methods and procedures, KPMG Consulting found 0% compliance.³⁹ KPMG Consulting made its initial test findings in observing 23 orders and 115 tasks that Qwest technicians should have followed.

KPMG Consulting described the impact of Qwest's failure to follow its documented methods and procedures as follows:

Failure to adhere to Unbundled Dark Fiber Method and Procedures could result in unnecessary delays to provision the fiber to the CLEC. The delays could result in any of the following:

³⁷ Qwest does not report any performance results for Dark Fiber Unbundled Loops in its Idaho PID Results.

³⁸ Qwest does not report any Dark Fiber Interoffice Transport activity in the Idaho PID Results.

³⁹ Final Report, p. 186.

- (i) Unnecessary and/or redundant testing on the fiber.
- (ii) Inability to conduct educated troubleshooting should problems arise with the fiber in the future,
- (iii) Provisioning inferior fiber to the CLEC that couldn't support the intended service offering. These delays could increase a CLEC's operating costs as a result of the added time required to ensure proper provisioning of the fiber, and could decrease its customers' satisfaction because of the possible delays.⁴⁰

In a series of responses related to this Exception, Qwest made documentation improvements that eventually satisfied KPMG Consulting that Qwest's documented methods and procedures were adequate.⁴¹ However, there remained on December 6, 2001 the question of whether Qwest technicians would follow Qwest's unbundled dark fiber methods and procedures. That question was answered during KPMG Consulting's retest of Exception 3010. During the retest, KPMG Consulting found that Qwest's adherence to its documented procedures fell far short of the 95% compliance benchmark. KPMG Consulting found that Qwest technicians only followed the documented methods and procedures in 64% of the 50 tasks when observing 10 unbundled dark fiber circuits.⁴² Based upon Qwest's woeful performance in following its own methods and procedures, KPMG Consulting appropriately found that Qwest had not satisfied Evaluation Criteria 14-1-10. The evidence in the record demonstrates that Qwest technicians do not follow Qwest's documented methods and procedures for provisioning unbundled dark fiber circuits.

Based upon the low level of commercial activity on unbundled dark fiber and KPMG Consulting's "Not Satisfied" finding, the Commission can comfortably conclude that Qwest is

⁴⁰ Exception 3010, KPMG Comments, August 10, 2001.

⁴¹ Exception 3010, KPMG Response, December 6, 2002.

⁴² Final Report, p. 186.

not capable of providing either dark fiber for unbundled loops (Checklist Item 4) or interoffice transport (Checklist Item 5) to CLECs.

4. KPMG Consulting Has Found That Qwest is Not Capable of Providing Enhanced Extended Links to CLECs.

EELs are a combination of the unbundled loop and unbundled dedicated interoffice transport network elements. KPMG Consulting found the evaluation criterion “Qwest provisions EEL circuits by adhering to documented method and procedure tasks” was not satisfied.⁴³ This was a test to determine if Qwest technicians follow Qwest methods and procedures when installing EELs. Like with the testing of dark fiber, this type of testing is referred to as a “process evaluation.” There is very little EEL activity in the state of Idaho. Over the last year, there were five EEL orders installed in Idaho.⁴⁴ Therefore, the process evaluation in the ROC test is the best method of assessing Qwest’s capability to provision EELs.

The ROC OSS test found that Qwest was not capable of providing EELs to CLECs. In its initial test of the ability of Qwest technicians to follow Qwest’s documented methods and procedures, KPMG Consulting found 87% compliance.⁴⁵ KPMG Consulting made its initial test findings in observing 11 orders and 79 tasks that Qwest technicians should have followed. KPMG Consulting described the impact of the failure of Qwest’s technicians to follow Qwest methods and procedures as follows:

Failure to provision high capacity DS1 EEL circuits in a manner consistent with documented methods and procedures may lead to the inconsistent delivery of products to CLECs. This could increase a CLEC’s operating costs as a result of increased resources required to investigate the issue. A CLEC’s customers may experience decreased levels of satisfaction if unnecessary delays occur.⁴⁶

⁴³ Final Report, p. 187, Evaluation Criterion 14-1-14.

⁴⁴ Qwest Idaho PID Results, p. 99, OP-3D.

⁴⁵ Final Report, p. 187, Evaluation Criterion 14-1-14.

⁴⁶ Exception 3104, December 27, 2001.

In a series of responses related to this Exception, Qwest made documentation and training improvements that eventually satisfied KPMG Consulting that Qwest's documented methods and procedures were adequate.⁴⁷ However, there remained the question of whether Qwest technicians would follow Qwest's unbundled dark fiber methods and procedures. That question was answered during KPMG Consulting's retest of Exception 3104. During the retest, KPMG Consulting found that Qwest's adherence to its documented procedures had gotten worse than during the initial test and that the rate of Qwest adherence fell far short of the 95% compliance benchmark. KPMG Consulting found that Qwest technicians only followed the documented methods and procedures in 60% of the 15 tasks when the installation of EELs.⁴⁸ Based upon Qwest's woeful performance in following its own methods and procedures, KPMG Consulting appropriately found that Qwest had not satisfied Evaluation Criteria 14-1-14.

It should be noted that in the two months that Qwest installed EEL circuits for CLECs in Idaho, Qwest missed the benchmark in one month.⁴⁹ Based upon KPMG Consulting's "Not Satisfied" finding and Qwest's commercial performance in Idaho, the Commission can comfortably conclude that Qwest is not capable of providing EELs unbundled loops (Checklist Item 2) to CLECs.

5. KPMG Consulting Has Found That Qwest's Provisioning of UNE-P and Business Resale Services to CLECs for Installations That do not Require a Dispatch is Discriminatory.

KPMG Consulting found that Qwest was provisioning UNE-P services⁵⁰ and business resale services⁵¹, where the installation did not require a dispatch, in a discriminatory manner. Qwest will install the large majority of UNE-P and business resale orders without the need for a

⁴⁷ Exception 3104, KPMG Consulting Second Response, January 28, 2002.

⁴⁸ Final Report, p. 187.

⁴⁹ Qwest PID Results, p. 99, OP-3D.

⁵⁰ Final Report, pp. 198, Evaluation Criterion 14-1-36.

⁵¹ Final Report, pp 196 – 197, Evaluation Criterion 14-1-34.

dispatch. This test finding confirms that discriminatory practices will produce discriminatory results. The discriminatory practice that creates the discriminatory result is that Qwest's standard interval for virtually all UNE-P POTS orders is three business days.⁵² In contrast, many retail POTS orders where the installation does not require a dispatch can have a standard interval of the next business day.

Not surprisingly, KPMG Consulting found in the test that Qwest was installing UNE-P services in about three days and Qwest was installing the equivalent retail service in about two days. Qwest's failure of the ROC test should permit the Commission to comfortably conclude that Qwest has failed to demonstrate compliance with checklist items 2 for provisioning UNE-P services and 14 for business resale services.

B. Maintenance and Repair

1. Qwest Fails to Provide Timely Responses to CLEC Requests to Modify a Trouble Report.

KPMG Consulting found the evaluation criterion "Modify trouble report transactions are processed within the guidelines established by the ROC TAG benchmark" not satisfied.⁵³ In its response to the exception that formed the basis for the not satisfied result, Exception 3107, Qwest attempted to mitigate the KPMG Consulting findings of failure to meet the benchmark standard with its own "home grown" test results.⁵⁴ Qwest's attempt to substitute independent, third-party test results with its own results do not hide the fact that Qwest failed to meet the agreed upon benchmark for the time to process a request to modify a trouble report.

Qwest agreed to the testing of the modify trouble report function in the Customer Electronic Maintenance and Repair ("CEMR") interface and agreed to the 24-second benchmark

⁵² Qwest Communications, Service Interval Guide for Resale and Interconnection Services, April 18, 2002, pp. 10 – 11.

⁵³ Final Report, pp. 331 – 332, Evaluation Criterion 16-3-5.

⁵⁴ Exception 3107, Qwest Initial Response, January 31, 2002.

for that function. The modify trouble report function is a critical component of the CEMR interface. The modify trouble report function was significant enough that Qwest agreed that it should be included in Test 16.

As to Qwest's attempts to substitute its "home grown" non-design edit transaction data for KPMG Consulting's ROC OSS test data, AT&T urges the Commission to dismiss that data for the same reasons as KPMG Consulting did. When presented with Qwest's internally developed non-design edit transaction data, it stated:

The approach taken by Qwest to conduct three internally administered tests is inconsistent with the methodology set forth and agreed upon by the ROC TAG. As defined in the document *ROC M&R Volume Recommendation*, version 4.7, October 9, 2001, the ROC TAG agreed to a third party test conducted by KPMG Consulting. Furthermore, there are no provisions in the *Master Test Plan* for consideration of Qwest-administered tests. KPMG Consulting concluded that the difference of three seconds between the benchmark and Qwest's performance is statistically significant and constitutes an unsatisfactory result.⁵⁵

Qwest requested the Exception be closed as unresolved on February 21, 2002. At that point in the test, it was known that the OSS testing would not be completed until mid-March at the earliest. That provided sufficient time to complete a retest. Qwest also had the time to conduct three of its own internal retests. Rather than take the time, effort and expense to perform three internal retests, it would have been more appropriate for KPMG Consulting to perform one independent retest. The Commission should be suspicious of Qwest's internally produced data given that Qwest had the opportunity for KPMG Consulting to conduct an independent retest and declined to pursue the option that would have produced more trustworthy results.

2. KPMG Consulting Found Deficiencies in the Quality of Qwest's Repair Records.

⁵⁵ Exception 3107 Disposition Report, February 26, 2002.

KPMG Consulting found the evaluation criterion “Close out codes for out-of-service and service affecting wholesale UNE-P, resale, and Centrex 21 troubles indicated in Qwest’s systems, and that may or may not require the dispatch of a technician, are consistent with the troubles placed on the line” not satisfied.⁵⁶ KPMG Consulting’s finding of not satisfied for this evaluation criterion calls into question the accuracy of Qwest’s reported maintenance and repair results. This “Not Satisfied” evaluation criterion concerns KPMG Consulting’s findings that Qwest personnel were inaccurately assigning disposition and cause (“D/C”) codes to CLEC trouble reports. D/C codes are necessary to determine who caused the trouble to occur (i.e. the CLEC, the customer, Qwest or some other party) and what was the cause of the trouble. KPMG Consulting concluded that “[i]ncorrect closeout codes could distort performance results that are reported to regulatory agencies and others.”⁵⁷

KPMG Consulting found in its initial test that Qwest personnel were improperly assigning D/C codes over 38% of the time.⁵⁸ After Qwest claimed it had instituted corrective actions and KPMG Consulting conducted a retest, Qwest personnel were found to be incorrectly applying D/C codes on over 11% of the trouble reports.⁵⁹ In its final statement concerning this exception KPMG Consulting stated that, “KPMG Consulting reaffirms its response of 01/17/2002 and believes that the results of the retest still constitute an unsatisfactory result.”⁶⁰

It should be noted that in observation 1028 Liberty Consulting found similar problems with Qwest personnel inaccurately applying D/C codes to trouble reports. In observation 1028, Liberty Consulting concluded, “[w]hile Liberty expects that the renewed focus on methods and

⁵⁶ Final Report, pp. 353 – 354, Evaluation Criterion 18-6-1.

⁵⁷ Exception 3055 Disposition Report, February 7, 2002, p. 2.

⁵⁸ Exception 3055, September 27, 2001.

⁵⁹ Exception 3055 Disposition Report, February 7, 2002, p. 2.

⁶⁰ Exception 3055 Disposition Report, February 7, 2002, p. 2.

procedures should work to reduce the error rate in MTTR, it cannot substantiate those effects at this time.”⁶¹

Two separate auditors found problems with how Qwest was assigning D/C codes to trouble tickets and neither auditor was able to conclude that the frequency with which Qwest was making D/C code errors had reached acceptably low levels. The two separate findings of problems with the accuracy of Qwest’s maintenance and repair results and Qwest’s choice to not take any corrective actions suggests that Qwest’s reported maintenance and repair results are unreliable and not to be trusted.

KPMG Consulting described the impact of inaccurate close out codes as follows:

Inaccurate close-out codes could reduce Qwest’s ability to detect consistent problems reported by CLECs. This could prevent Qwest from being able to repair problems before they are reported by CLECs. This could also cause a CLEC’s customers to experience avoidable problems that could reduce their level of satisfaction with a CLEC.⁶²

Qwest asserted that additional training of its technicians should reduce the close out code error rate to acceptable levels.⁶³ While Qwest recognized the problem and asserted that it had implemented a solution, Qwest chose to have Exception 3055 closed as unresolved rather than subject itself to the rigor of a KPMG Consulting retest.

3. KPMG Consulting Found Deficiencies in the Quality of Qwest’s Maintenance and Repair Activities.

KPMG Consulting determined that Qwest had not satisfied the evaluation criterion, “Out-of-service and service affecting wholesale UNE-P, resale, and Centrex 21 troubles that may or may not require the dispatch of a technician are successfully repaired.”⁶⁴ Successful repair of

⁶¹ Observation 1028 Disposition Report, March 1, 2002, p. 1.

⁶² Exception 3055, September 26, 2001.

⁶³ Exception 3055, Qwest Response to 3rd KPMG Supplemental Recommendation, January 28, 2002.

⁶⁴ Final Report, p. 355, Evaluation Criterion, 18-7-1.

troubles by Qwest that are found in CLEC services is a critical element in the satisfaction of a CLEC's customers. A failure by Qwest to repair the service on the first attempt will necessitate a second visit to the customer and will likely reduce the level of customer satisfaction with the CLEC.

C. Billing

1. KPMG Consulting's Evaluation of the DUF Returns, Production and Distribution Process Failed to Identify Serious and Critical Deficiencies in Qwest's DUF Processes.

KPMG Consulting did two types of testing of Qwest's daily usage files ("DUF"). One test was to evaluate, from an operational perspective, Qwest's process for producing and distributing DUF.⁶⁵ The second test was to test the output of Qwest's DUF processes.⁶⁶ KPMG Consulting's testing of Qwest's ability to transmit complete and accurate DUF to CLECs (the output test) showed that Qwest failed the test five consecutive times.⁶⁷ Only on the sixth retest of DUF did KPMG Consulting find that Qwest just made KPMG Consulting's benchmark for DUF completeness and accuracy.⁶⁸

The fact that Qwest failed, on five separate occasions, to provide complete and accurate DUF records to the pseudo-CLEC speaks very poorly of the processes that Qwest uses to produce and distribute those records. Qwest's DUF production and distribution processes time and time again provided incomplete and/or inaccurate DUF to the pseudo-CLEC. Not only was Qwest producing incomplete and/or inaccurate DUF, but it appeared the only way that Qwest was able to identify it had a serious problem with incomplete and/or inaccurate DUF was for KPMG Consulting to identify it through the OSS retesting. It does not appear that Qwest has a

⁶⁵ Master Test Plan, Version 5.2, April 9, 2002, Test 19.6, pp. 90 – 93.

⁶⁶ Master Test Plan, Version 5.2, April 9, 2002, Test 19, pp. 88 – 90.

⁶⁷ Final Report, p. 19.

⁶⁸ Final Report, pp. 415 – 416. KPMG Consulting's standard for DUF completeness and accuracy was 95%. On the sixth retest, Qwest's result was 96%.

mechanism in place that is sensitive to and can detect problems with the completeness and accuracy of its DUF production and distribution processes.

Given that Qwest's DUF production and distribution processes produced unsatisfactory results during five DUF retests, it would seem logical that KPMG Consulting would have some criticism of Qwest's DUF processes in Section 19.6 of the Final Report. Surprisingly, other than two "Unable to Determine" results for a DUF returns process that was not examined during the test, KPMG Consulting found Qwest's process for producing and distributing DUF records to be satisfactory. It is as if KPMG Consulting is saying that despite the death of five patients (the DUF retest results), the five operations were a success (the process that produced the DUF retest results).

KPMG Consulting attempted to mitigate Qwest's inadequate DUF production and distribution processes by making an inappropriate and unnecessary distinction between process activities that "are embedded in automated systems, rather than in manual processes."⁶⁹ Qwest's embedded, automated systems were losing as much as 31% of the pseudo-CLECs DUF records with apparently no visibility to anyone at Qwest. For Qwest's DUF production and distribution processes to be that defective for so long without any detection by the Qwest personnel responsible for those processes is obscene. It should be cold comfort to the Commission that when it comes to the production of complete and accurate DUF, the "sixth time's the charm." KPMG Consulting cannot rely upon the argument that since it could not easily look into the effectiveness of the embedded, automated systems that it should rely solely on the results of the DUF transaction test. Qwest finally did achieve KPMG Consulting's 95% benchmark result for DUF. However, from a process evaluation perspective, the passing of the sixth test does not

⁶⁹ Final Report, p. 425, Evaluation Criterion 19.6-1-5 and p. 427. Evaluation Criterion 19.6-1-6.

negate that those processes failed on five previous occasions and there was not apparent means for Qwest to identify its failure.

What makes KPMG Consulting's finding that a process (that produced defective results in five of six tests is satisfactory) inappropriate is that it applied a more reasonable approach in the evaluation of the process that produced CLEC bills. Like with the DUF test, Qwest failed the wholesale billing transaction test on multiple occasions. However, in its findings on the adequacy of the processes that produce wholesale bills, KPMG Consulting factored in prior transaction test failures in its conclusions. KPMG Consulting found that prior and repeated test failures made a satisfactory finding of its Wholesale Bill Production Process impossible.

Specifically, KPMG stated:

KPMG Consulting's repeated receipt of erroneous bills suggests that, while Qwest's manual process to catch errors may be adequate, Qwest may not adhere to its defined process.

During final retesting of bill accuracy, KPMG Consulting did receive correct bills. However, KPMG Consulting is not able to conclusively determine whether these bills are correct because of the bill creation process, or because of adherence to Qwest's defined post-production quality assurance processes. Therefore, KPMG Consulting must assign an Unable to Determine result for Qwest's adherence to its post-production quality assurance process.⁷⁰

AT&T believes that Qwest's repeated failure of the DUF retest demonstrates serious problems with Qwest's DUF production and distribution processes. Consequently, AT&T believes that KPMG Consulting's conclusions for Evaluation Criteria 19.6-1-1 (whether DUF production and distribution procedures are clearly defined), 19.6-1-4 (whether DUF balancing and reconciliation procedures are clearly defined), 19.6-1-5 (whether DUF routing and guiding is controlled by defined and documented processes), and 19.6-1-6 (whether DUF routing and

⁷⁰ Final Report, p. 461, Evaluation Criterion 20.7-1-4.

guiding contains functionality to adequately address pending and completed service order activity warranted a finding of “Not Satisfied.”)

D. Change Management Process Comments re: Exceptions in the Final Report

The FCC’s five criteria required of change management plans are:

(1) that information relating to the change management process is clearly organized and readily accessible to competing carriers; (2) that competing carriers had substantial input in the design and continued operation of the change management process; (3) that the change management plan defines a procedure for the timely resolution of change management disputes; (4) the availability of a stable testing environment that mirrors production; and (5) the efficacy of the documentation the BOC makes available for the purpose of building an electronic gateway.⁷¹

“As part of this demonstration, the [FCC] will give substantial consideration to the existence of an adequate change management process and *evidence* that the [RBOC] *adhered to this process over time*.”⁷² This requirement forms a fundamental problem for Qwest.

In previous filings, AT&T and others have noted that KPMG could not proclaim that Qwest had complied with its obligation to adhere to its CMP plan over time. Exception 3110, 3111 and 3094 all attest to the problem and in the KPMG Consulting Final Report Version 2.0, the status of those Exceptions has not changed. As a consequence, KPMG’s evaluation related to Test 23-1-7⁷³ (Exception 3110) is closed “unable to determine,” Test 23-1-8⁷⁴ (Exception 3111) is closed “unable to determine,” Test 23-1-9⁷⁵ (Exception 3110) is closed “unable to

⁷¹ *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, Memorandum Opinion and Order, CC Docket No. 00-65, FCC 00-238 (Rel. June 30, 2000) at ¶ 108 (hereinafter “**SWBT Texas 271 Order**”).

⁷² *Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to provide In-Region, InterLATA Services in Arkansas and Missouri*, Memorandum Opinion and Order, CC Docket No. 01-194, FCC 01-338 (Rel. Nov. 16, 2001) at ¶ 40. (emphasis added).

⁷³ Evaluation Criteria: whether “Procedures and systems are in place to track information such as descriptions of proposed changes, key notification dates, and change status.”

⁷⁴ Evaluation Criteria: whether “Criteria are defined for the prioritization system and for severity coding.”

⁷⁵ Evaluation Criteria: whether “Qwest complies with notification intervals and documentation release requirements.”

determine,” Test 23-2-7⁷⁶ is closed “unable to determine,” Test 23-2-8⁷⁷ (Exception 3094) is closed “unable to determine,” Test 23-2-9⁷⁸ (Exception 3094) is closed “unable to determine” and Test 23-2-2⁷⁹ (Product/Process) is closed “unable to determine.” In short, neither the third party tester, the Commission nor Qwest can prove that Qwest has met the FCC’s criteria and adhered to it over time.

Likewise, Exception 3095 (Test 24.6-1-8) regarding whether SATE⁸⁰ is “made available to customers for all supported interfaces is closed “not satisfied.” Similarly, Exception 3109 (Test 24.6-2-9) regarding whether “carrier-to-carrier test environments are available and segregated from Qwest production and development environments” also remains unsatisfied.

Again, the only conclusion possible is that Qwest has not satisfied in its entirety the requirements the FCC has set for SATE. Thus, the Commission should not recommend to the FCC that Qwest’s SATE meets its criteria.

III. CONCLUSION

KPMG Consulting’s findings in the ROC OSS test provide the Commission with sufficient reason to conclude that Qwest has not met its obligations for checklist items 2 Access to Operational Support Systems, 5 Unbundled Interoffice Transport and 14 resale. In addition, the serious data integrity issues raised by KPMG Consulting mean that Qwest’s self-reported performance measurement results are highly suspicious. Until Qwest has remedied the identified deficiencies to the satisfaction of the Commission or KPMG Consulting, Qwest should be found

⁷⁶ Evaluation Criteria: whether “Procedures and systems are in place to track information such as descriptions of proposed changes, key notification dates, and change status” for Product/Process.

⁷⁷ Evaluation Criteria: whether “Criteria are defined for the prioritization system and for severity coding.”

⁷⁸ Evaluation Criteria: whether “Qwest complies with notification intervals and documentation release requirements.”

⁷⁹ Evaluation Criteria: whether “The change management process is in place and documented.”

⁸⁰ Stand Alone Test Environment or SATE.

non-compliant with the aforementioned checklist items. For all of these reasons, the Commission should reconsider its Order of June 10, 2002.

Respectfully submitted on June 11, 2002

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